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Employment Discrimination by Japanese-Owned Companies in the United States: Hearings Before the Employment and Housing Committee on Government Operations

Lewis M. Steel '63

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EMPLOYMENT DISCRIMINATION BY JAPANESE-OWNED COMPANIES IN THE UNITED STATES

HEARINGS

BEFORE THE

EMPLOYMENT AND HOUSING SUBCOMMITTEE

OF THE

COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

JULY 23, AUGUST 8, AND SEPTEMBER 24, 1991

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APPENDIX

EMPLOYMENT DISCRIMINATION BY JAPANESE-OWNED COMPANIES IN THE UNITED STATES

TUESDAY, JULY 23, 1991

HOUSE OF REPRESENTATIVES,
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m. in room 2247, Rayburn House Office Building, Hon. Tom Lantos (chairman of the subcommittee) presiding.

Present: Representatives Tom Lantos, Matthew G. Martinez, Rosa L. DeLauro, Ileana Ros-Lehtinen, and Christopher Shays.

Also present: Representative David L. Hobson.

Staff present: Stuart E. Weisberg, staff director and counsel; Lisa Phillips and Joy Simonson, professional staff members; June Livingston, clerk; and Christina J. Tellalian, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN LANTOS

Mr. LANTOS. The Employment and Housing Subcommittee will please come to order.

Japanese-Americans have made significant contributions to the life of our Nation in countless fields. Some of the most distinguished Members of the U.S. Congress are Japanese-Americans. There is not a single arena of human endeavor where our Japanese-American fellow citizens have not distinguished themselves in exemplary ways. I have the highest respect and admiration for the Japanese-American community and its invaluable work for the betterment of all Americans.

At the same time, however, employment discrimination by Japanese-owned companies against American citizens in the United States is a problem, and it is the subject of today's hearing.

In recent years, there has been a phenomenal surge in Japanese investment in the United States, as the Japanese have bought American companies, taken over factories, hotels, movie studios, and purchased real estate from the sidewalks of New York to the streets of San Francisco.

The Japanese have modernized some old plants, built new factories, and created many new jobs for American workers. As a Nation, we welcome Japanese investment, but we cannot and will not allow Japanese companies in the process to flout our values and principles or violate our labor, civil rights, and nondiscrimination laws.

There appears to be an increasing number of workers charging employment discrimination by Japanese companies in the United States on the basis of race, gender, or national origin. However, we do not have statistics that measure the extent of the problem.

The Equal Employment Opportunity Commission [EEOC], and the Labor Department's Office of Federal Contract Compliance Programs, do not keep complete and accurate statistics on the number of discrimination charges filed against foreign-owned companies operating in the United States, be they Japanese, British, German, or of any other origin.

As we will hear discussed in testimony today, the EEOC, the Equal Employment Opportunity Commission does not verify the statistics submitted by companies on EEO–1 and these statistics are often meaningless. For those unfamiliar with this terminology, EEO–1 does not refer to Clarence Thomas' license plate when he was Chairman of the Equal Employment Opportunity Commission.

Rather, it is a form that companies are required to submit to EEOC annually, profiling their work force, including the number of minorities and women. Further, the statistics submitted by Japanese companies on their EEO–1 are often skewed and misleading as a result of the rotating staff of employees who come to the United States from the Japanese parent company.

At today's hearing, we will hear from several individuals who have either witnessed or are victims of employment discrimination by Japanese companies. This subcommittee, of course, is not an adjudicatory body, and it is not the intent of the Chair to decide or judge any of these cases.

One of our witnesses today, Mr. Paul Schmidtberger, a recent graduate of Stanford Law School, will discuss his experience working for Recruit, a Japanese-owned employment agency in California which specialized in placing workers for Japanese companies. He will discuss how the employment agency used code words to identify potential workers by race, by sex, and by age, and how, on a daily basis, job applicants were discriminated against and not referred by Recruit solely on the basis of their race or sex or age.

In his testimony today, Equal Employment Opportunity Commission Chairman Mr. Kemp announces that EEOC and Recruit have settled this discrimination case. Under the terms of the agreement, Recruit is to establish a $100,000 fund to be distributed among the victims of its discrimination. Recruit is also required under the agreement to hold two equal employment opportunity training seminars in Japan to educate Japanese managers who are coming to the United States on our fair employment laws.

I have serious concerns about the terms of the settlement agreement. First, with hundreds of job applicants discriminated against and not referred by Recruit solely because they were not of a specific race or sex or age, the $100,000 settlement may work out to only a few dollars per discriminatee.

Second, is this the company we want to be giving training seminars about United States antidiscrimination laws to Japanese managers who are coming to the United States? That is like having Leona Helmsley instruct people on how to prepare a tax return. I intend to question EEOC Chairman Kemp about this settlement agreement.

The fact that a particular company is appearing before the subcommittee should not be interpreted as meaning that the company has done anything wrong or that it practices employment discrimination.

I welcome the officials from Nikko Securities Co. and Honda of America, and look forward to a constructive dialog about their employment policies and practices.

Finally, the next in this series of hearings by the subcommittee will take place on Thursday morning, August 8 in San Francisco City Hall where our focus will be on employment discrimination by banks and other Japanese-owned companies in California.

It gives me pleasure to call on the ranking Republican of the subcommittee, my friend, Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you very much, Chairman Lantos for this opportunity.

As we all know, Mr. Chairman, charges of discrimination in the workplace are serious allegations that should be seriously and carefully considered. Discrimination has many different faces and can affect all aspects of the working environment.

At one time, race and gender discrimination were common practices which were widely accepted in private industry, but after passage of the 1964 Civil Rights Act, employment discrimination was a little harder to identify. It took on a new face and became more of a clandestine operation.

I wonder how many people in this room have experienced some covert form of discrimination, how many times has someone been turned down for a job not because of their qualifications, but because their last name was hard to pronounce or the color of their skin was different. Unfortunately, these are all aspects of our society that still exist.

Discrimination of any kind will not be tolerated. We have entrusted the Equal Opportunity Employment Commission with the difficult task of investigating charges and enforcing our Federal laws.

According to the EEOC, it can receive between 55,000 and 75,000 complaints of discrimination each year. These can include charges of sexual harassment or charges of discrimination based on ethnic and religious backgrounds or accents.

Today, we will look into these allegations of concealed discrimination. I am confident that these issues can be addressed through open dialog and communication.

I would like to express a special thanks to the Chairman of the EEOC for all of his work in promoting the rights of all individuals. It is a tough job, and he has displayed outstanding ability, especially for disabled Americans.

I would like to also thank my friend and colleague, Chairman Tom Lantos, for initiating this hearing. I know he shares all of our concerns for obtaining fair and equitable conclusions from this hearing.

I would also like to thank our witnesses for appearing before the subcommittee today, and I also look forward to hearing their testimony and ideas for finding solutions to the discriminatory practices in the workplace.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much, Congresswoman Ros-Lehtinen.

We will now hear from Congressman Marty Martinez.

Mr. MARTINEZ. Thank you, Mr. Chairman.

I'm not really sure I want to make a statement for fear of saying something that would offend someone, but you know, it is really funny, here we are having a hearing on discrimination by Japanese-owned companies, and it reminds me of things that have happened in the past. For instance, when the Prime Minister made the disparaging remarks about the minorities of this country. They don't even understand discrimination, I don't think, because they have treated their women for millions of years in a very discriminatory way, and they want to bring those archaic ideas to our shores.

They are our guests in the United States when they own our companies here, even though they own those companies. They are not the embassy. They are not exempt from our laws. But their arrogance makes them exempt. That arrogance I've seen many, many times. I've seen their arrogance to our people who buy shares in their companies.

In one particular board meeting I know of they addressed a woman in a very derogatory manner. They insinuated that she had made her money to buy the shares in that Japanese company in less than an honorable way. When they say to those people who want to participate in their companies, "go home, Yankee," I think that there is an arrogance that is subtle, but it's there.

It's fine if they want to practice that in Japan and treat the women in the archaic way that they do, but not here in this country. I think I must commend you for holding this hearing to bring these things to light. I think we ought to move to try to curtail those kinds of activities by any of those Japanese-owned companies in this country.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much, Congressman Martinez.

Next, I'd like to call on my friend and colleague, Congresswoman Rosa DeLauro of Connecticut.

Ms. DELAURO. Thank you, Mr. Chairman.

Mr. Chairman, over the past 50 years, our country's policy toward discrimination in the workplace has turned from one of ambivalence to one that aggressively challenges businesses that discriminate. We have passed legislation which protects the worker by making it illegal to deny employment on the basis of race or sex or religion. We have fought for a system that encourages equitable pay among the sexes. We have strived to insure that it is the quality of work that determines advancement and compensation.

In general, we have made great strides toward attaining this goal, though admittedly there is still room for improvement. While I'm prepared to continue this battle against those who employ unfair labor practices, I am concerned about reports of a new type of discrimination—discrimination by foreign-owned companies against American workers.

We encourage foreign investment in our Nation, and the influx of capital from overseas invigorates our economy, provides jobs for our citizens, but if the price for this investment is the denial of fair

treatment for American workers, then the price, Mr. Chairman, is too high.

Discrimination by any firm, foreign or domestic, is unacceptable, and, sadly, it appears that women and minorities are disproportionately the victims of this discrimination.

Mr. Chairman, I approach this hearing with an open mind, but I am deeply concerned by these reports and determined to vigorously investigate any allegations of workplace discrimination. We have established procedures to address causes of individual discrimination, but when a pattern emerges indicating widespread institutional prejudice, Congress, I believe, has a special obligation to pursue these charges.

Let me thank you, Mr. Chairman, for bringing this matter to the attention of the subcommittee. I'm anxious to hear the testimony of our witnesses who I hope will be able to shed some light on this problem.

Thank you.

Mr. LANTOS. Thank you very much.

As has been the practice of the subcommittee during the tenure of my chairmanship, I've always welcomed colleagues who are not members of the subcommittee but for special reasons have an interest in the subject matter.

It gives me great pleasure to welcome my friend and colleague from Ohio, Congressman David Hobson. If there is any opening statement you would like to make, you're most welcome to do so.

Mr. HOBSON. Thank you, Mr. Chairman. I sincerely appreciate your allowing me to make this statement and to be in attendance.

As a member of the full committee, but not of this subcommittee, as you mentioned, this is particularly important to me and I appreciate the opportunity to attend.

I agree with you. We must be more aggressive in eliminating discrimination by Japanese firms in the United States and certainly discrimination everywhere.

At the same time, I think we also should recognize those companies that have proven their ability to provide equal opportunity in the workplace. Honda of America, located in Marysville, OH in my congressional district, I believe, is one of those companies.

I'm here to talk about many of the efforts that Honda has made in improving its hiring practices over the past several years. I'm proud that Ms. Susan Insley, the senior vice president of Honda of America, and one of those people directly responsible for setting up a system that promotes fair and equal opportunity, is here to represent Honda.

Susan is a former employee of this institution, having worked for Congressman Bud Brown some years ago and then going on to law school, and today has a very responsible position with Honda.

I've had a good and long relationship with Honda. As a former State senator of Ohio, I worked with the company to begin programs to give more opportunities to minorities. As a matter of fact, when I first toured the plant, Mr. Chairman, I noticed that Honda did not have many blacks, enough women, or people over 40 working in the company. I mentioned it to Susan, who was giving me the tour at that time, that I thought they needed to do better, and she agreed.

I said I looked at this as an opportunity for my district and the town I lived in, which was now coming within their hiring arena. So I went back home and went to a number of ministers that I knew and said, "Get me some résumés and I will get you an interview at Honda. I can't promise you a job, but I'll get you an interview," and we began to do that.

We became pretty involved in that and later, I turned it over to OIC, which is a program which was started by Leon Sullivan which I was on the board of in my town, and it has proven a good working relationship, I believe, between Honda and has certainly increased the percentage of minorities hired from my community of Springfield to Honda which is probably about 30 miles away.

Honda, I think, responded; EEOC played an important role in that—one which I didn't know about at the time I made that commitment—and they have improved their employment ratios. I think they will attest to that today.

Honda's production work force with 10,000 employees is 32 percent female, 10 percent black, and 18 percent over the age of 40. Since I am over 40, I tend to look at that one better. Furthermore, Honda has an excellent program in place to promote qualified blacks and women to increase the number of American engineers working at Honda.

It's no surprise to people in our local area that Honda was named Employer of the Year in 1990 by the Private Industry Council in Columbus, OH which also is an area where they have attracted a number of minority persons to the company.

I believe that Honda has been a good and fair employer in my district, and I think they're working to even do better. I'm glad that Susan Insley, who played a key leadership role in doing this, is here to testify and will testify today.

Mr. Chairman, I appreciate the time this morning to be here to express my strong support for Honda's commitment. If they don't live up to it in the future, you let me know, and I'll get after them again, just as I did about 5 years ago, I think it was, when I toured the plant and said, this is wrong and it's got to be changed, and I think they'd respond to that.

I thank you, Mr. Chairman, for having them here today.

Mr. LANTOS. Thank you very much, Congressman Hobson.

The first panel will please come forward: Mr. Paul Schmidtberger, former Recruit employee; Ms. Susan Minushkin, former Nikko Securities employee; Ms. Judy Teller, former DCA Advertising employee; Mr. Russell Goyette, former DCA Advertising employee; and Ms. Nancy Cosgrove, former Ricoh Corp. employee. Will you please stand and raise your right hand?

[Witnesses sworn.]

Mr. LANTOS. We want to thank all five of you for appearing. It takes some courage and a commitment to a principle which is a very important principle, a principle of equal opportunity and nondiscrimination, and I am sure all of my colleagues join me in expressing our appreciation to you.

We will begin with you, Mr. Schmidtberger. Your entire prepared statement will be entered in the record. You may proceed any way you choose.

STATEMENT OF PAUL SCHMIDTBERGER, FORMER EMPLOYEE, RECRUIT U.S.A.

Mr. SCHMIDTBERGER. Mr. Chairman, members of the committee, good morning, and thank you for giving me the opportunity to speak to you.

My name is Paul Schmidtberger and I have been asked to describe some of the experiences I had while working for Recruit U.S.A., a Japanese employment agency located in Los Angeles, CA.

I worked for Recruit U.S.A. from November 1987 to August 1988. Recruit U.S.A.'s primary function was to locate Japanese-English bilingual job applicants for positions in Japan. Those positions were with both Japanese companies and American companies in Japan.

A second corporation, called Transworld Recruit, shared office space with Recruit U.S.A. and placed applicants in positions solely within the United States. At Recruit, I communicated with my supervisors and coworkers almost exclusively in Japanese.

During my employment, I became aware of a number of discriminatory employment practices that both Recruit U.S.A. and Transworld Recruit were engaged in. I would like to describe two of those practices to you.

The first discriminatory practice concerns a coding system that Transworld Recruit used to identify job applicants by race, sex, and age. When prospective employers requested applicants or temporary employees of a specific race, sex, or age, Transworld Recruit used a code system to communicate those requests within the office and on written personnel request forms.

This code system used common names to denote race and sex. If an employer only wanted to hire men, the request would be coded "See Adam;" "Talk to Adam;"or "Meet with Adam." If women were to be hired, the code would read "Talk to Eve."

When the employer requested Japanese men, the code would read "Talk to Haruo," which to a Japanese speaker, is obviously a man's name. Where Japanese women were preferred, "Talk to Mariko" was used, which again, to someone who spoke Japanese, would obviously mean a Japanese woman.

The code was also used to identify who should be excluded. For example, "Maria" was the code word for Hispanic women and "Maryanne" was used to refer to black women. Thus, when an employer indicated that they did not want to interview black or Hispanic women, their request would be coded "Don't talk to Maryanne or Maria."

Finally, the code also used suite numbers to communicate an employer's age preferences. For example, a request coded "Talk to Mariko, Suite 2035" indicated that the employer had requested a Japanese woman, age 20 to 35.

Thus, while the outside observer might think that such notations were utterly insignificant, the employees of Transworld Recruit and Recruit U.S.A. were all aware that those words were being used on a daily basis to screen job applicants on the basis of their race, sex, and age.

The second discriminatory practice concerned applicant screening within Recruit U.S.A., my own division. On several occasions, I

was myself ordered by my supervisor to screen applicants for certain positions on the basis of their race and sex.

As I mentioned earlier, Recruit U.S.A. located bilingual candidates for positions available in Japan. To do this, we published a quarterly called the "Shushoku Joho," which translates to the "Journal of Employment Opportunity." We distributed the Shushoku Joho to bilingual students in the United States.

Generally speaking, prospective employers would purchase one to four pages of advertising space. Their advertisement would typically describe the company, available entry level positions, and any job requirements. Students interested in a particular company would fill out a preaddressed reply card or résumé form and return it either to the company directly or, in some cases, to Recruit U.S.A.

For an additional fee, however, Recruit U.S.A. offered a followup service. In that case, the reply cards or résumé forms would be returned to Recruit U.S.A. where we screened them according to the employer's instructions. The remaining pool of résumés would then be forwarded to the employer for further narrowing. Next, we would contact the remaining applicants and assemble them in the United States. The prospective employer could then fly over from Japan and conduct the interviews all at once.

In the spring of 1988, Recruit U.S.A. performed a followup for IBM Japan. Accordingly, IBM Japan placed an advertisement in the Shushoku Joho, and résumé forms were returned directly to Recruit U.S.A. for an initial screening.

Our instructions for the screening were communicated to us by our supervisors, Mr. Katsumi Ureshino and Mr. Masashi Kamimura. We were explicitly instructed to invite only Asians to interview.

To prevent any misunderstanding, a memorandum entitled "IBM Project Confirmation," that was written in Japanese, was taped to the wall directly opposite my desk by my supervisor, Mr. Ureshino. That memorandum specified that IBM sought to hire approximately 25 people in the interview sessions.

Point 1 of that memo stated that applicants would only be considered if they were under 35 years old. Point 2 stated that men and women would be considered equally. Among other job qualifications, point 3 explicitly stated that "foreigners were no good." It was parenthetically explained that this was IBM Japan's current policy.

The specifics of this policy were outlined in the next sentence which read—still in Japanese—"White people, black people, no. But second generation Japanese or others of Asian descent, OK." This memorandum remained taped to the wall until July 13, 1988, when I removed it.

The instructions on that memo were followed and non-Asian applicants were screened out. They were sent letters explaining that the response to the advertisement had been overwhelming and that many qualified applicants could not be interviewed. This was not true. They were rejected because of their race and their race alone.

It should be borne in mind that the advertisements in Shushoku Joho were written in Japanese and that all applicants returning the résumé forms, both Japanese and non-Japanese alike, complet-

ed those forms in Japanese. In other words, all of the applicants possessed the appropriate language skills, but those who were Caucasian, Hispanic, or black were never allowed the opportunity to even apply for the positions.

This practice was by no means confined to the IBM Japan campaign. On other occasions, we were given explicit instructions to screen applicants based on race, sex, and age. In a followup campaign for Meiko Securities, for example, I was instructed to assemble a candidate pool with a male to female ratio of 8 to 2.

When too few applicants expressed interest in Meiko, I was directed to select Japanese males from our data base and invite them directly to apply for positions. This occurred despite the fact that a number of qualified, non-Japanese applicants were rejected on account of their race. Over my strenuous objections, I was personally ordered to reject them by my supervisors.

On at least two occasions, I was ordered by the head of Transworld Recruit, Ms. Hideyo Harada, to generate lists of potential job candidates from Recruit U.S.A.'s data base. Ms. Harada ordered me to confine these lists to Japanese males only.

Before I left Recruit, the format of our data base was modified, in fact, to include fields for each individual's race or national origin and sex. Thus, lists of potential candidates by race could then be generated automatically.

In conclusion, throughout the period that I was employed by Recruit U.S.A., that company, and its sister corporation, Transworld Recruit, knowingly engaged in blatantly discriminatory employment practices. Transworld Recruit coded personnel request forms to cater to the discriminatory wishes of their clients.

Likewise, at the request of Japanese and American companies in Japan, Recruit U.S.A. screened résumés and denied otherwise qualified applicants the opportunity to interview for positions solely on the basis of their race, sex, and age.

Thank you for permitting me to discuss these important issues with you today. I look forward to any questions that you might have.

[The prepared statement of Mr. Schmidtberger follows:]

STATEMENT OF

PAUL SCHMIDTBERGER

BEFORE THE EMPLOYMENT AND HOUSING SUBCOMMITTEE

OF THE COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

July 23, 1991

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applicants possessed the appropriate language skills, but those who were Caucasian, Hispanic or Black were never allowed the opportunity to even apply for the positions.

This practice was by no means confined to the IBM Japan campaign. On other occasions we were given explicit instructions to screen applicants based on race, sex and age. In a follow-up campaign for Meiko Securities, for example, I was instructed to assemble a candidate pool with a male to female ratio of 8 to 2. When too few applicants expressed interest in Meiko, I was directed to select Japanese males from our database and invite them directly to apply for positions. This occurred despite the fact that a number of qualified, non-Japanese applicants were rejected on account of their race. Over my strenuous objections, I was personally ordered to reject them by my supervisors.

On at least two occasions I was ordered by the head of Transworld Recruit, Ms. Hideyo Harada to generate lists of potential job candidates from Recruit U.S.A.'s database. Ms. Harada ordered me to confine these lists to Japanese males only. Before I left Recruit, the format of our database was modified, in fact, to include fields for each individual's race or national origin and sex. Thus, lists of potential candidates by race could then be generated automatically.

In conclusion, throughout the period that I was employed by Recruit U.S.A., that company, and its sibling

corporation, Transworld Recruit, knowingly engaged in blatantly discriminatory employment practices. Transworld Recruit coded personnel request forms to cater to the discriminatory wishes of their clients. Likewise, at the request of Japanese and American companies in Japan, Recruit U.S.A. screened resumes, and denied otherwise qualified applicants the opportunity to interview for positions solely on the basis of their race, sex and age.

Thank you for permitting me to discuss these important issues with you today. I look forward to any questions that you might have.

IBM Project confirmation

IBM Proj. 確認事項 (4/4 1988 at Tyo. (Tokyo) with

Mr. OTOMO. (R)
Mr. UEDO (R.USA)
• TSUBOI (R)
IBM: KIDO (Rec.)
KOBAYASHI (Rec.2.)
KOJIMA (営業)
ATSUGUMA (•)
KUWAHARA (R.↓)

1. 年齢 Age 新卒 New graduate ～35才位迄 years old about
2. 男女問わず male or female doesn't matter
3. 学歴 ○ 専門問わず (文・理共) personal history major irrelevant arts sciences
   But コンピューター (ハード・ソフト) 経験者が Better computer hard soft experienced person
   as same as "Recruit Type"
   ○ ※ M.B.A 優遇しない no special treatment
   ○ ※ 外国人不可 (IBMの現地主義) foreigner wrong IBM's current rule/policy
   但. 日系米国人・アジア系はOK. But 2nd generation Japanese Americans, Asian descent OK
   > 白人黒人 X. white people blackpeople No
   ○ 大学のランクにはこだわらない university ranking is irrelevant
4. 目標 goal 春の Int. Session で 25人の採用を目指す To get about 25 people who will be graeducating by may 89 in the spring interviewing sessions.
   ('89 5月迄) 卒業

Mr. LANTOS. Thank you very much, Mr. Schmidtberger. We will have a lot of questions to ask of you.

For the record, the Chair would like to state that Recruit is expected to testify at our next hearing on this subject, in all fairness.

Our next witness is Ms. Susan Minushkin, a former Nikko Securities employee. We are pleased to have you. Your prepared statement will be entered in the record in its entirety. You may proceed any way you choose.

STATEMENT OF SUSAN MINUSHKIN, FORMER EMPLOYEE, NIKKO SECURITIES

Ms. MINUSHKIN. I was employed at Nikko Securities from January 1985 until April 1987. While I was at Nikko Securities, although there were some individuals within the company, both high and low level, Japanese employees who recognized there were problems, I felt that throughout the company there was an institution of discrimination against women and non-Japanese, and the company was not able to address these problems internally. Because of that, I filed suit. I'd like today to go through some of the employment practices that I observed while I was at Nikko.

First, recruitment of employees at Nikko. Advertisements were placed in newspapers for positions as secretaries and administrative assistants when I joined Nikko. I was told the position I applied for, administrative assistant, was the entry level professional position for college graduates. Everyone hired into these positions was female.

Within 1 month of me joining Nikko, a man was hired into my department whose qualifications were almost identical to mine. He was given a newly created position—sales trainee. This was a higher level position. He was given a higher rate of pay than any of the other women that had already been promoted two levels above him and other people with equal qualifications, women who were employed as administrative assistants and secretaries.

He was the first non-Japanese man hired into the department. All other non-Japanese employees were women college graduates. All of the women started as secretaries or assistants. This pattern was also present in other departments at Nikko.

After I was at Nikko for about 1 year, Nikko set up a fellowship program at Princeton University for college juniors to work in Nikko's Tokyo office for the summer in the hope that some of these fellows might want to join the company after graduation.

I was told by my Japanese coworkers that the program only accepted men. The reason for this was that the company dormitories in Tokyo could only accommodate men. A female graduate of Princeton was hired at Nikko at about this time. She was hired as an assistant.

Treatment of women at Nikko: All women were routinely subject to overt and subtle forms of discrimination. All women, regardless of their position, secretary or professional, were required to fill in for the receptionist during lunch hour. No men, regardless of their position, were required to do the same. All women were addressed by their first name. All men were addressed as "Mr." so and so. Single women were frequently asked about their future marriage

plans, on one hand as encouragement to marriage, on the other to assess when the women would be leaving the company.

Women were also forced to work longer periods of time before rising to the level of assistant vice president, the lowest officer level of the corporation. Professional men, by and large, at Nikko were promoted to this position within 2 years. Professional women, on the other hand, worked as long as 7 years before rising to this status. Their qualifications, and in my opinion, their work habits, were equivalent.

Training programs in the Tokyo headquarters were offered to American male employees before any women were included in the program. Tuition reimbursement for graduate courses in business, while available, was to be reserved for those who "deserved it first"—Japanese male employees who would only be in the United States for a limited period of time.

Male employees in the sales department, all Japanese except one, were given more active account bases. Women were given account bases where the possibility of doing significant levels of business was remote.

Treatment of non-Japanese employees: All non-Japanese employees were required as marginal. Japanese employees from the Tokyo headquarters were treated by management in subtle but significant ways that enhanced their status relative to the non-Japanese employees.

Japanese employees, regardless of their position, were included in the consensus decisionmaking typical of Japanese companies. Since these discussions were informal, the Japanese employees would discuss them after work over drinks.

American employees were not invited to accompany the Japanese staff in these after work gatherings. This prevented the American staff from being able to participate in the departmental discussions where plans and future courses of action are discussed.

Because of the hierarchal nature of the Japanese culture and the extreme emphasis on rank and respect for one's superiors, Americans, hired into lower level positions, and women, exclusively hired into the lowest level positions, are placed in a situation where they are the lowest group on the totem pole and are forced to show respect and a type of subservience to all Japanese employees at the company.

The effect of this is to reinforce the low level of the women employees and to make more difficult their attempts to earn the professional respect of their colleagues and to be perceived by management as professionals.

The credentials of women employees were also frequently challenged. In one instance, when a new manager came from Tokyo, my credentials to be in a sales position were challenged by him. He said that because he had never heard of my university, the University of Pittsburgh, and because it was not an Ivy League school, he did not know whether I was qualified for the position I was in.

Furthermore, because all Japanese employees passed a preemployment test, he could always have more faith in his Japanese employees than in his American employees' qualifications. No such test was required of American employees.

Treatment by Nikko after I left the company: After spending 2½ years at Nikko, I left because of my frustrations. I joined Merrill Lynch in a similar capacity, serving the same client base as Nikko.

I would frequently hear from my clients disparaging remarks made by Nikko to the customers about my professional capabilities and my personal life. I believe these remarks were made because Nikko believed that I was party to a lawsuit. At this time, I was not party to the lawsuit.

Certain employees at Nikko attempted to portray me as the typical young woman who does not know much but flirts and sleeps her way to success. This was untrue and, fortunately, my clients recognized it as an attempt to undermine the credibility of a competent competitor.

Nikko has also sought to portray me as an unreliable and ungrateful employee in the business community. My response to the charge of unreliability is to point out that the salary increases and bonuses I received were among the highest in the company.

My response to ungratefulness is that while I was employed at Nikko, I frequently brought to the attention of management the issues I later raised in the lawsuit.

I believe as the company gained more experience in the United States and brought in more American executives, the personnel practices would change.

I recognize that while I felt I was being discriminated against relative to the male and Japanese employees, I was also being given an extraordinary opportunity to learn about the Japanese capital markets. Unfortunately, the company's efforts to change took longer than I was willing to sacrifice in my professional development.

Significant change has taken place at Nikko since I left, according to various friends and associates who work at or do business with Tokyo, but this change began only after the lawsuit was filed. That was the reason I joined the lawsuit.

I believe that just as American companies did not change until they were forced to by the courts because of historical and cultural attitudes about women, so too were lawsuits needed to spur the Japanese companies to change their employment practices in the United States.

[The prepared statement of Ms. Minushkin follows:]

Statement of

Susan Minushkin

Employment and Housing Subcommittee

July 23, 1991

1. Recruitment of Employees at Nikko Securities

Advertisements were placed in newspapers for positions as secretaries and administrative assistants when I joined Nikko. I was told the positions I applied for, administrative assistant, was the entry-level professional position for college graduates. Everyone hired into these positions was female. Within one month of my joining Nikko, a man was hired into my department whose qualifications were almost identical to mine. He was given a newly created position of sales trainee. This was the first non-Japanese man hired into the department. All other non-Japanese employees were women college graduates. All of the women started as secretaries or assistants. This pattern was also present in other departments at Nikko.

After I was at Nikko for about one year, Nikko set up a fellowship program at Princeton for college juniors to work in Nikko's Tokyo office for the summer, in the hope that some of the fellows would join the company after graduation. I was told by my Japanese co-workers that the program only accepted men. The reason for this was that company dormitories were male-only. A female graduate of Princeton was hired at Nikko at about this time. She was hired as an assistant.

2. Treatment of Women at Nikko

All women were routinely subject to overt and subtle forms of discrimination. All women, regardless of their position, secretary or professional, were required to fill in for the receptionist during lunch hour. No men were required to do the same. All women were always addressed by their first name, all men were addressed as Mr. Single women were frequently asked about their future marriage plans, on one hand as encouragement to marry, on the other, to assess when the women would be leaving the company. Women were also forced to work longer periods of time before rising to the level of assistant vice president. Professional men, at Nikko, were usually promoted to this position within two years.

Professional women worked as long as seven years before rising to this status. Training programs in the Tokyo headquarters were offered to American male employees before any women were included in the program. Tuition reimbursement for graduate courses in business, while available, was to be reserved for those who deserved it first, Japanese men employees from the Tokyo office. Male employees in the sales department, all Japanese except one, were given more active account bases. Women were given account bases where the possibility of doing significant levels of business was remote.

3. Treatment of Non-Japanese Employees

All non-Japanese employees were regarded as marginal. Japanese employees from the Tokyo headquarters were treated by management in subtle but significant ways that enhanced their status relative to the non-Japanese employees. Japanese employees, regardless of their position, were included in the consensus decision-making typical of Japanese companies. Since these discussions were informal, the Japanese employees would discuss them after work over drinks. American employees were not invited to accompany the Japanese staff in these after work gatherings. This prevented the American staff from being able to participate in the departmental discussion where plans and future courses of action are discussed.

Because of the hierarchial nature of Japanese culture and the extreme emphasis on rank and respect for one's superiors, Americans, hired into lower level positions, and especially women, exclusively hired into the lowest level positions, are placed in a situation where they are the lowest group on the totem pole and are forced to show respect and a type of subservience to all Japanese employees at the company. The effect of this is to reinforce the low level of the women employees and make more difficult their attempts to earn the professional respect of their colleagues and to be perceived by management as professional employees. The credentials of women employees were also frequently challenged. In one instance, when a new manager came from Tokyo, my credentials to be in a sales position were challenged by him. He said that because he had never heard of my university, The University of Pittsburgh, and because it was not an Ivy League school, he did not know whether I was qualified for the position I was in. Furthermore, because all Japanese employees pass a pre-employment test he could always have more faith in his Japanese employees than in his American employees. No such test was required of American employees.

4. Treatment by Nikko after I left the Company

I left Nikko in April 1987 after spending 2 1/2 years there. I joined Merrill Lynch in a similar capacity, serving the same client base as Nikko. I would frequently hear from my clients disparaging remarks made by Nikko to the customers about my professional capabilities and my personal life. Certain employees at Nikko attempted to portray me as the typical young women who

does not know much but flirts and sleeps her way to success. This was untrue and fortunately my clients recognized it as an attempt to undermine the credibility of a competitor. Nikko has also sought to portray me as an unreliable and ungrateful employee. My response to the charge of unreliability is to point out that the my salary increases and bonuses were among the highest in the company. My response to ungratefulness is that while I was employed at Nikko I frequently brought to the attention of management the issues raised in the lawsuit. I believed that as the company gained more experience in the United States and brought in more American executives, the personnel practices would change. I recognized that while I felt I was being discriminated against relative to the male and Japanese employees I was also being given an extraordinary opportunity to learn about the Japanese capital markets. Unfortunately, the company's effort to change took longer than I was willing to sacrifice my professional development. Significant change, has taken place at Nikko since I left, according to various friends and associates who work at or do business with Nikko. But, this change only began after the lawsuit was filed. That was the reason I joined the lawsuit. I believed that just as American companies did not change until they were forced to by the courts, because of historical and cultural attitudes about women, so too were law suits needed to spur the Japanese companies to change their employment practices in the United States.

Mr. LANTOS. Thank you very much, Ms. Minushkin. We'll have some questions to ask of you.

Our next witness is Ms. Judy Teller, former DCA Advertising employee. We are pleased to have you, Ms. Teller.

STATEMENT OF JUDY TELLER, FORMER EMPLOYEE, DCA ADVERTISING

Ms. TELLER. Good morning, and thank you.

I was hired at DCA in October 1988 by the American creative director of the agency, who himself reported to a Japanese creative director. My position was one of five associate creative directors. Each ACD managed a group of five to seven copywriters and art directors.

When I arrived, I had high hopes for the future of my career at DCA. I believed I could make a significant contribution as a senior American creative professional, and I looked forward to a work environment in which Japanese and Americans could nourish and inform each other, thereby achieving exciting new advertising.

This last part was very important to me. I had worked in Paris for another agency in senior creative management and found international collaboration an extremely pleasant and rewarding experience. Moreover, from a philosophical point of view, I believe in international economic cooperation as a means to a more stable world, both economically and politically.

I was to find, however, that there were insurmountable barriers to my career progress at DCA, that there were limits to the contributions I could make, and that my career itself there was at all times fragile. All of this was due to two deficiencies on my part: I'm neither Japanese nor male.

There were two standards at the agency. One was for Japanese and the other for Americans. It was actually the stated policy of Japanese management that they could not treat the two groups alike, and the difference was patent in the way the two groups were treated.

Japanese employees received material benefits not accorded to Americans. These included cars, generous housing allowances, tuition for their children, a double bonus system by which they were rewarded for the same work efforts, both by DCA and by Dentsu, DCA's parent company in Tokyo.

Before each Dentsu assignee arrived from Tokyo at DCA in New York, he was sent, at company expense, through an English immersion program of several months at Maryland University's Language Center. One of the reasons offered by DCA for the mass dismissal of Americans was that these employees' positions required fluency in Japanese. We had never at any time, however, been offered immersion programs in Japanese.

DCA did pay up to half tuition for once-a-week language classes at the Japan Society in New York, the amount depending on the grade received. Even at maximum reimbursement, an American taking regular classes paid a few hundred dollars a year out of his or her own pocket, and with classes once a week, it would take even a dedicated student at least 5 years and probably more to achieve any degree of reasonable fluency in Japanese.

I know this because, enjoying this language study very much, I've continued regular classes at the Japan Society. My quarrel is not with the Japanese, their culture or their language, but specifically with the way in which some Japanese companies in the United States treat their American employees.

Japanese employees also participated in a closely knit network of weekend and after hours socializing, strictly for Japanese. Through this free, constant and exclusive interchange, Japanese employees have the inside track to Japanese management. This made it very difficult to manage Japanese subordinates. Weekly meetings having to do with agency business were also held after work on Fridays strictly for Japanese.

When my American boss suggested it might be very useful for agency functioning to include American managers in these meetings, he was told they were only for Japanese.

Most significant, the jobs of the Japanese were guaranteed. One employee sent from Japan did not work out on the account to which he was assigned. He was then reassigned to a series of different accounts and succeeded on none of them.

Subsequently, he spent a year in his private office in New York. He was observed to be reading the newspaper and that was his activity, at full pay, approximately $100,000 per year, plus all the above-mentioned prerequisites. He was not recycled back to Japan before the normal term of his stay in the United States was up because this would have caused him to lose face.

In fact, a sizable chunk of agency funds was used to save this man's face. When the agency felt pinched financially, no consideration was given to dismissal or even repatriation of this clearly unqualified employee. Many qualified, productively performing Americans, however lost their jobs.

As to my other handicap, gender, I learned that there was a reason why there were no other women at my level in my department. Japanese management did not really consider middle management an appropriate position for women. When my boss, the American creative director, needed to replace another ACD, it so happened that the best qualified candidates he found were women. He was directed to eliminate them from eligibility because one woman at this level was enough—I believe that's a direct quote.

I also learned that my position was absolutely the highest level that a woman could hope to attain at DCA. When my American boss was required to set up a new sales promotion division for DCA, thereby vacating the creative director's job, he strongly recommended me for promotion to the position. He was told that a woman could not possibly qualify or be considered. The American—male, of course—who took his job and became my new boss was young, relatively inexperienced and junior for the job according to the unsolicited opinion of sources in California where he had been employed before.

In sum, it seems to me that American law, belief, and custom have been trampled on in this case. National origin and sex were determining factors in an employee's future at DCA, rather than merit and dedication. Now, after many months of effort and expense, my coplaintiffs and I have a right-to-sue letter granted by the EEOC. We're very glad to have it, but it's surely no news that

the economy of the Northeast is battered and reeling. Unemployment is running high generally, and in the advertising industry, it's a multiple of the national rate.

Some of us have found jobs, some of us have not. Those who have are earning approximately two-thirds of their previous salaries. Financially strapped and emotionally wounded, we now have the right to drain our resources further in court against one of the largest, richest corporations in the world, Dentsu Tokyo, and judging by the delaying tactics used by DCA and Dentsu so far, we can expect this to be a lengthy and very expensive process.

So my question is: Why is it that private citizens, out on the street in a terrible job market, have no recourse but to go into court? Shouldn't government, shouldn't the EEOC be enforcing the equal opportunity for all workers that we say we believe in? Couldn't there be some support for people who have been injured, perhaps funding for a group of people like us to insure that the law is enforced?

Of course these issues are terribly significant for me and for my coplaintiffs in this case, but this fight really isn't just for us as individuals. It's for all American workers.

Thank you.

[The prepared statement of Ms. Teller follows:]

Judith Teller

July 23, 1991

Before the Subcommittee on Employment and Housing

I was hired at DCA in October 1988 by the American Creative Director of the agency, who himself reported to a Japanese Creative Director. My position was one of five Associate Creative Directors. Each ACD managed a group of five to seven Copywriters and Art Directors.

When I arrived, I had high hopes for the future of my career at DCA. I believed I could make a significant contribution as a senior American creative professional. And I looked forward to a work environment in which Japanese and Americans could nourish and inform each other, thereby achieving exciting new advertising.

This last part was very important to me. I had worked in Paris for another agency in senior creative management and found international collaboration am extremely pleasant and rewarding experience. Moreover, from a philosophical point of view, I believe in international economic cooperation as a means to a more stable world both economically and politically.

I was to find, however, that there were insurmountable barriers to my career progress at DCA, that there were limits to the contribution I could make, and that my career itself there was at all times fragile. All of this was due to two "deficiencies" on my part: I am neither Japanese nor male.

There were two standards at the agency; one was for Japanese and the other for Americans. It was actually the stated policy of Japanese Management that they could not treat the two groups alike. And the difference was patent in the way the two groups were treated.

Japanese employees received material benefits not accorded to Americans. These included cars; generous housing allowances; tuition for their children; a double bonus system by which they were rewarded for the same work effort both by DCA and by Dentsu, DCA's parent company in Tokyo.

They participated in a closely knit network of weekend and after-hours socializing, strictly for Japanese. Through this free, constant, and exclusive interchange, Japanese employees had the inside track to Japanese management. This made it very difficult to manage Japanese subordinates. Weekly meetings having to do with agency business were also held after work on Fridays, strictly for Japanese. When my American boss suggested that it might be very useful for agency functioning to include American managers in these meetings, he was told they were only for Japanese.

Most significant, the jobs of the Japanese were guaranteed. One employee, sent from Japan, did not work out on the account to which he was assigned. He was then re-assigned to a series of different accounts, and succeeded on none of them. Subsequently, he spent a year in his private office in New York, reading the newspaper at full pay (approximately $100,000 per year) plus all the above-mentioned perquisites. He was not recycled back to Japan before

the normal term of his stay in the U.S. was up because this would have caused him to lose face. In fact, a sizable chunk of agency funds was used to save this man's face. When the agency felt pinched financially, no consideration was given to dismissal or even repatriation of this clearly unqualified employee. Many qualified, productively performing Americans, however, lost their jobs.

As to my other "handicap" -- gender, I learned that there was a reason why there were no other women at my level in my department. Japanese Management did not really consider middle management an appropriate position for women. When my boss, the American Creative Director, needed to replace another ACD, it so happened that the best qualified candidates he found were women. He was directed to eliminate them from eligibility, because one woman at this level was enough.

I also learned that my position was absolutely the highest level a woman could hope to attain at DCA. When my American boss was required to set up a new Sales Promotion Division for DCA, thereby vacating the Creative Director's job, he strongly recommended me for promotion to the position. He was told that a woman could not possibly qualify or be considered.

The American (male, of course) who took his job and became my new boss was young, relatively inexperienced, and junior for the job, according to the unsolicited opinion of sources in California where he had been employed before.

In sum, it seems to me that American law, belief, and custom have been trampled on in this case. National origin and sex were determining factors in an employee's future at DCA, rather than merit and dedication.

After many months of effort and expense, my co-plaintiffs and I have a right-to-sue letter granted by the EEOC. Now, it's no news that the economy of the NorthEast is battered and reeling. Unemployment is running high generally, and in the advertising industry it's a multiple of the national rate. Some of us have found jobs; some of us have not. Those who have, are earning approximately 2/3 of their previous salaries.

Financially strapped and emotionally wounded, we now have the right to drain our resources further, in court against one of the largest, richest corporations in the world: Dentsu, Tokyo. And judging by the delaying tactics used by DCA and Dentsu so far, we can expect this to be a lengthy and very expensive process.

So my question is, why is it that private citizens, out on the street in a terrible job market, have no recourse but to go into court? Shouldn't government -- shouldn't the EEOC -- be enforcing the equal opportunity for all workers that we say we believe in? Couldn't there be some support for people who've been injured -- perhaps funding for a group of people like us to insure that the

law is enforced.

Of course, these issues are terribly significant for me and my co-plaintiffs in this case. But this fight really isn't just for us as individuals -- it's for all American workers.

Mr. LANTOS. Thank you very much, Ms. Teller.

Our next witness is Mr. Russell Goyette, former DCA Advertising employee. We're pleased to have you, Mr. Goyette.

STATEMENT OF RUSSELL GOYETTE, FORMER EMPLOYEE, DCA ADVERTISING

Mr. GOYETTE. Thank you, Mr. Chairman.

I also want to express my appreciation and thanks to other committee members and other interested parties here today.

I was hired by DYR Advertising in April 1985. DYR was a joint venture between Dentsu, Tokyo—the world's largest advertising agency, and Young & Rubicam, one of America's largest and most prestigious agencies.

I was very excited about the prospect of working in this bicultural environment. I wanted to learn more about the Japanese and hopefully work within an organization that could bridge the two cultures and blend the best from both management systems.

I learned a great deal from my American and Japanese supervisors. The Japanese managers at DYR had a great deal of international experience and frequently took the time to share with me their Japanese perspectives.

In 1986, Dentsu acquired Y&R's interest in the agency and changed the name to DCA. As a wholly owned subsidiary of Dentsu, the operating style of the management began to shift. In 1988, a new senior management team was sent from Japan but this time with little overseas experience. Although they spoke English very well, their perspectives were narrow and the favored treatment of Japanese employees became more obvious.

Eventually, I learned that the preferential treatment Japanese employees received included: a higher salary level than their American counterparts, a very generous housing and child allowance, double bonuses, cars for personal use, better advancement opportunities with little regard for qualifications or performance, and the ultimate benefit, which hit home quite clearly on September 6 of last year: the Japanese had total job security.

On September 6, 1990, DCA fired 26 employees, 25 of whom were American. The only Japanese person let go was an older woman who had expressed her desire to retire and return to Japan.

When I was fired, I approached DCA's president and asked his help in finding a position within Dentsu or with a Dentsu affiliate. I asked for the same treatment that he would give to Japanese executives at my level. He denied my request. He told me that he had to treat Japanese employees more favorably than someone who is an American.

As vice president, group account director, I had become the senior American in the account services department. After 5½ years of working side by side with Dentsu executives and traveling to Dentsu in Tokyo several times, the practice of operating with a double standard became clearer to me than ever.

What baffles me is how DCA can offer advice to prospective clients, claiming to understand the American market and American attitudes, when they openly ignore fundamental legal rules of equal opportunity governing all U.S. commerce.

Is the DCA situation an isolated case? I don't think so. I respectfully suggest that Dentsu represents prevailing attitudes in corporate Japan. Do we see a growing incidence in the mistreatment of American employees by Japanese companies? I do.

Ladies and gentlemen of this committee, we need your help. Put some teeth into your legislation. Give the EEOC new weapons and see that they are used. In the present situation, you are pitting individuals with limited resources, often unemployed, against some of the richest and most powerful corporations in the world.

The EEOC has given us a "right-to-sue" letter. Thanks a lot, and we do appreciate it, but Federal law doesn't allow us punitive or compensatory damages. The offending corporation may end up paying my lost wages, that is if we prevail and if we can wait out the court process of 2 to 3 years.

Meanwhile, a Japanese executive, holding a green card, is in my position, at twice my compensation level with half of my qualifications.

We, the American employee, need your help in guaranteeing this basic right.

Thank you for your attention.

[The prepared statement of Mr. Goyette follows:]

RUSSELL GOYETTE

former Employee -- DCA Advertising

July 23, 1991

Before the Employment and Housing Subcommitee

I was hired by DYR Advertising in April of 1985. DYR was a joint venture between Dentsu, Tokyo, the world's largest advertising agency, and Young & Rubicam, one of America's largest and most prestigious agencies.

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- Double bonuses.
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On September 6, 1990 DCA fired 26 employees, 25 of whom (to the best of my knowledge) were American. The only Japanese person let go was an older woman who had expressed her desire to retire and return to Japan.

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What baffles me is how DCA can offer advice to prospective clients, claiming to understand the American market and American attitudes, when they openly ignore the fundamental legal rules of equal opportunity governing all US commerce.

Is the DCA situation an isolated case? I don't think so. I respectfully suggest that Dentsu represents prevailing attitudes in corporate Japan. Do we see a growing incidence in the mistreatment of American employees by Japanese companies? I do.

Ladies and gentlemen of this committee, we need your help. Put some teeth into your legislation. Give the E.E.O.C. new weapons and see that they're used. In the present situation, you are pitting individuals with limited resources (often unemployed) against some of the richest and most powerful corporations in the world.

The E.E.O.C. has given us a "right to sue" letter. Thanks a lot! Federal law doesn't even allow us punitive or compensatory damages. The offending corporation may end up paying only my lost wages, that is if we prevail and can wait out the court process of two to three years.

Meanwhile, a Japanese executive, holding a green card, is in my position, at twice my salary, with half of my qualifications.

We, the American employee, need your help in guaranteeing a basic right.

Mr. LANTOS. Thank you very much.

Let me say for the record that DCA is expected to testify at our hearing scheduled in September on this subject.

Our final witness on this panel is Ms. Nancy Cosgrove, former Ricoh Corp. employee. We're very pleased to have you. You may proceed in any way you choose.

STATEMENT OF NANCY COSGROVE, FORMER EMPLOYEE, RICOH CORP.

Ms. COSGROVE. Thank you, Chairman Lantos.

I'd like to thank you and this committee for the privilege of testifying here today. I hope that my comments will enlighten and educate you about what it's like to work for a Japanese employer.

I began my career in the Japanese business sector in 1982 at NEC Telephones. NEC Telephones is a wholly owned subsidiary of NEC America, which is a subsidiary of Nippon Electric Co. in Tokyo.

In my position at NEC Telephones, I was administrator of marketing support in charge of trade shows, both major market and co-op advertising, and public relations. I left NEC in 1984 to join Ricoh Corp. which is a wholly owned subsidiary of Ricoh Co. Limited in Japan. I joined Ricoh Corp. as public relations program manager, reporting to the director of corporate communications. The corporate communications department at the time reported directly to the chairman's office.

Before I expand upon my experiences at Ricoh, which is why I'm here today, I'd like to preface my comments by saying that my testimony here today deals strictly with my experiences at Ricoh Corp. I will say that some of my observations were true about both companies, but I am not here today speaking implicitly or explicitly about my experiences at NEC Telephones.

Discrimination at Ricoh Corp. has moved underground, making it insidious and almost impossible to prove, check or stop. It would appear that American businessmen who are more traditionally oriented in their views on affirmative action are migrating to Japanese firms like Ricoh where their attitudes won't be challenged, changed or checked.

In my experience, it was the American businessmen with their Japanese supervisors' tacit approvals, who were perpetuating discriminatory practices at Ricoh Corp. In my particular case, I was discriminated against by Americans. Whether or not it was on the advice of their Japanese supervisors will probably never be known. As I hope you'll see, the Japanese at Ricoh provided an ideal environment for employment discrimination.

I joined Ricoh Corp. because I had had a wonderfully educational professional experience at NEC. I believed at the time that Japanese employers exposed their American employees to a greater number of challenging professional experiences than did their American counterparts. Yes, workloads were heavier, hours were longer, but it also provided a greater opportunity for expanding your career base.

At the time, I was single and very impressed by Japanese employers purported employment for life philosophy. Because I was

single, I wanted that sense of security, and I believed that Ricoh Corp. would supply it to me.

During my initial interview at Ricoh, I recall candidly discussing Ricoh's affirmative action program for promoting women. We discussed Japanese companies in general, their reputations for discriminatory practices, and I was assured by the director that affirmative action and promotions from within the company were common practices at Ricoh.

During this conversation, I was also promised one, a full-time secretary; two, management and professional training classes; three, larger public relations budgets than NEC afforded; and four, an obtainable career path.

I started at Ricoh Corp. in February 1984. I chose to leave a perfectly acceptable position at NEC Telephones with a staff of two subordinates to pursue what I believed was a more stimulating, aggressive, and creative public relations career at Ricoh.

I was laid off by Ricoh Corp. in February 1990. I can only describe my 6 years with Ricoh as being a daily rollercoaster ride of humiliation, despair, demoralization, and fear, which culminated in an overwhelming sense of sadness about the professional time I had wasted with the company.

As public relations program manager, I was responsible for the product and corporate public relations activities for the company's copier, camera, typewriter, and printer product lines. I was later to assume public relations responsibilities for their facsimile product line.

The secretarial support I was promised never materialized except in a shared capacity, and I was at Ricoh for 4 years before I was allowed to hire one staff support person. Interestingly enough, while I was interviewing applicants for the position, my immediate supervisor, an American, told me that I should hire a man to fill this position.

Fortunately, the best applicant for the position was a man, but even then, both my supervisor and the vice president of the division made derogatory comments about the fact that they suspected the fact that this applicant was Jewish.

Immediately after I started at Ricoh, it became apparent that the purse strings for the more creative and aggressive PR projects, which had initially attracted me to Ricoh, were tightly held by the director of our division and project decisions were made solely by the director based on the advice he received from Ricoh's inconsequential two-person PR firm and our director's fluctuating relationship with the chairman of Ricoh. I was rarely consulted. These facts were contradictory to the promises made to me during my interview for employment.

In my 6 years at Ricoh, I was allowed to take one course in employment management and motivation. This is the norm for most American employees at Ricoh. Interestingly enough though, Ricoh did for a spell offer special courses in affirmative action and discrimination to its executives at the director level and above.

Unfortunately, to the best of my knowledge, these classes were only available for 6 months, and executives were not required to take these courses. Because these courses were not offered to all employees, because they were not required of any employees, Ricoh

was creating an environment that was ideal for discriminatory employment practices at all levels of the organization and by all nationalities working at the organization.

An interesting obstacle that grew out of this career development program was the issue of job descriptions. As part of the program, all of the jobs within the company were to be reevaluated and equalized by title, rank, and pay rate.

It became a running joke among the Americans throughout the company when 2 years later, many people, myself included, still did not have a valid job description. My job description was finally completed because of a departmental reorganization.

One of Japanese companies' best and most effective discriminatory practices is through numerous corporate divisional and departmental reorganizations. During my tenure at Ricoh, I was repeatedly reorganized out of a viable career path to promotion. Each reorganization created a new managerial level which would again be reorganized several months later.

Within my 6 years at Ricoh Corp., I witnessed at least three corporate mergers, and well over 20 divisional and departmental reorganizations. Because I was part of the corporate communications division, reporting to the president's office, each of these reorganizations in one way or another affected me, my division, and my position within my division.

An outgrowth of these reorganizations was the fact that during my 6 years with Ricoh Corp., I had six supervisors, only one of which I reported to twice. With each of my supervisors in turn, I discussed my career goals, abilities, and interests. Each of these supervisors assured me that my career was thriving at Ricoh. I even discussed my career at Ricoh with the vice president of human resources in 1986, when I was again given the reassurance my career was doing well at the company.

Under these circumstances, with nonexistent job descriptions and supervisory shifts on an average of once a year, it was nearly impossible for me to have a clear picture of my career path or a firm idea of my place within the department or within the organization at large.

In 1986, when I was asked to report to an American man previously my equal within the organization, it became apparent that Ricoh was creating managerial tiers to obstruct my career growth as well as the career growth of several of my female colleagues.

An interesting sideline to these reorganizations is how the Japanese themselves view them. Apparently, these frequent reorganizations are a type of Japanese management training. The Japanese believe in exposing their most promising executives to as many different aspects of the business as possible. This creates a fast promotional track for the most promising Japanese nationals.

For example, at Ricoh, I knew a Japanese national who was in charge of another Ricoh company subsidiary and when that subsidiary folded, he joined Ricoh Corp. and was alternately involved as vice president of human resources, then with sales for the printer product line, and he is now in charge of the facsimile paper products area.

I know of another Japanese man who was transferred from a sales-oriented position on the west coast to become treasurer of

Ricoh Corp. Then with seemingly no experience in human resources, advertising, public relations, or management information systems, he became supervisor to all three of these divisions simultaneously.

Americans are not allowed or even encouraged to participate in this managerial pattern. Therefore, no matter what their gender, race or nationality, their promotional opportunities within a Japanese company are greatly diminished. When competing against a Japanese national for a new position or title, because of their perceived lack of corporate exposure, the American stands no chance of promotion or job status change.

It was universally understood and accepted among the Americans at Ricoh that the Japanese didn't trust us. I believe, as many of my colleagues did, that these reorganizations were a means taken by the Japanese to keep any one particular American or group of Americans from becoming too powerful within the organization.

In 1987, when our division was taken over by a new American vice president, I met with this man and discussed my career goals and background with the company. He assured me that I was heir apparent for the next promotion in the public relations department. He then asked me to take a title demotion from public relations manager to assistant public relations manager.

Interestingly enough, at the time of this request, I was told by both my American supervisor and this new vice president of our division, that because they were assigning me a subordinate, that this title actually reflected a promotion. I still don't know what the real truth is in this matter.

I was surprised when I met with this vice president again in June 1988 and he informed me that he was going to reorganize the public relations department, bringing in yet another tier of management for myself and my subordinate to report to.

During this meeting, I asked this man why he was making these changes and why I wasn't being considered for this position. His response was that the addition of this new person would be a good career opportunity for me. He said, "this new person would be someone I could learn from" and that this new reorganization would "allow me to spend more time with my family."

I asked that my credentials and abilities be considered for the position and he assured me that they would. I then met with the manager of our personnel department and expressed my interest in this position. I asked what procedures were outlined in our employee manuals for being promoted into this position.

He said that since I had already spoken to our divisional vice president, that there was no need for him to interview me and that I should just submit a résumé to the divisional vice president for his consideration.

Two days later, an advertisement for this new position ran in three local newspapers. The criteria and demands for the position read suspiciously close to my then current job description for about 90 percent of the jobs described in the ad. I had been performing these duties for the previous 18 months.

I then again met with the divisional vice president, again telling him of my interest in this position. He assured me that I would be

considered for the position, but "he didn't feel I was strong enough" for the position.

In early August, I submitted a public relations department plan and my résumé to this vice president for his evaluation for this position. Because I had not heard back from the vice president, in early October I met again with the personnel department and informed them that I had heard nothing from this vice president. He looked surprised and immediately asked if the vice president was in the office, and that was the last I heard of it.

Eleven days later, the vice president asked to meet with me and informed me that he had hired an American man to fill the open position. When I asked him why I hadn't been fairly considered for the position, he replied that I lacked public relations agency experience. Interestingly enough, agency experience was never listed as a criteria in the printed ad.

Contrary to the policy stated in our employee manuals, I was never interviewed for this position by either the personnel department at Ricoh or by the divisional vice president.

My new supervisor started at Ricoh in November 1989, and from the day he started, I knew my days of employment at Ricoh were numbered. Please understand that a public relations professional must keep pace with the changing trends both inside and outside of a company. This is so that they can learn how to best position the company and its products.

Typically, we do this by attending trade shows, through industry specific reading, general business reading, by speaking with industry editors and general business editors, and by meeting with corporate executives and product planners on a regular basis. I had been performing all of these duties for 5 years prior to my new supervisor's arrival at Ricoh.

Shortly after the arrival of my new supervisor, at his discretion, I was not included in the following: From December 1988, product public relations strategy meetings; from February 1989, proofreading and approving press copy; and from May 1989, public relations——

Mr. LANTOS. Ms. Cosgrove, I don't want to interrupt you, but are you about finished because we have a lot of other witnesses?

Ms. COSGROVE. Just about.

Mr. LANTOS. OK, just about. Try to wrap it up because I would like to begin the questioning.

Ms. COSGROVE. My trade show attendance was cut from six shows in 1988 to two in 1989. My new supervisor increased my workload substantially from upward of 60 to 70 hours a week. In May 1989, I filed a complaint with the New Jersey Division of Civil Rights.

My supervisor met this complaint with hostilities, threats, and our divisional vice president at the time pointedly ignored me, as did the treasurer of the company, who was his supervisor. The divisional vice president also accused me of holding feminist meetings to stir up trouble and would frequently meet with my subordinate behind my back.

My attorney and I met with Ricoh and the New Jersey Division of Civil Rights in August 1989, no determination was made in the case. In September, I requested that my complaint be withdrawn and my file was closed in December 1989.

In August 1989, right after I filed with the division of civil rights, my workload mysteriously disappeared. I had nothing to do. When I asked my supervisor if he had anything for me to do, he would ask me to perform secretarial duties for him. My subordinate left the company in September 1987 and I took over his responsibilities because he was not being replaced.

In April 1990, I filed a civil action against Ricoh Corp. in Superior Court of New Jersey for gender, marital, racial discrimination, intentional infliction of emotional stress, loss of current and future earnings, as well as damage to my reputation, and retaliation for my filing with the division of civil rights.

In January 1990, I informed my immediate supervisor that I was pregnant, but that I could continue to work and I planned to continue to work until my child was born in August 1990. In February 1990, I was laid off by the corporation.

At the time, I was told it was because there was an employee reduction of 100 people. To the best of my knowledge, all of the people laid off were Americans. No Japanese nationals were laid off, although they may have been sent back to Japan to Ricoh Corp.'s parent company to jobs.

I believe that my layoff was a direct result of the following: My filing a complaint with the division of civil rights; my litigation against Ricoh; and my decreased workload which diluted my position to the point where I could be laid off.

I recognize that I've given the longest testimony here today. I'd like to thank you for your patience and attention. I chose to be as explicit as possible out of fairness to Ricoh Corp. as well as to the committee.

I hope that this testimony gives you a clear idea of the kind of working environment Ricoh provided. It was fraught with double standards for Japanese nationals, Americans, men and women. With the exception of my layoff, I cannot point a finger at any individual Japanese personnel at Ricoh Corp. and say unequivocally, you discriminated against me.

I can, however, say with confidence that the perfect environment for covert, insidious discrimination existed at Ricoh, which allowed my American supervisors to ignore our country's laws on affirmative action.

I'd like to thank you for your attention.

Mr. LANTOS. Thank you very much, Ms. Cosgrove.

Before I begin the questioning, let me make some observations. By the way, Ricoh is expected to testify at our September hearing.

I've two reactions to these five witnesses. The first one is that I have, in all the years we have had hearings on a tremendous range of subjects from the HUD scandal to child labor, I've never seen a more impressive, articulate, intelligent, thoughtful, well-educated group of witnesses appear before this committee. I suspect any corporation, American, Japanese, or otherwise, ought to be delighted to have any or all of you work for them and promote you as your talents and abilities obviously indicate.

The second reaction I have is one of outrage and disgust that Japanese-owned corporations should discriminate against American citizens on such a systematic and large scale, against women,

against blacks, against Hispanics, and in general, against American nationals.

Your testimonies were given under oath, and there is little doubt in my mind that your testimony is accurate. It certainly was meticulous, carefully prepared and well thought out.

I think we are opening up an ugly chapter in United States-Japanese relations. It will not be closed until discrimination by Japanese companies against United States citizens comes to an end. It clearly has not yet come to an end.

Let me begin with you, Mr. Schmidtberger. Would you please tell us your educational background and qualifications?

Mr. SCHMIDTBERGER. Certainly. I have a B.A. from Yale University in East Asian studies, and I recently graduated from Stanford Law School. I worked for 1 year for the Japanese Ministry of Education in Chiba, Japan, where I communicated with my supervisors and coworkers again in Japanese.

Mr. LANTOS. You are bilingual or close to bilingual?

Mr. SCHMIDTBERGER. At the time, I considered myself bilingual or close to it.

Mr. LANTOS. Under what conditions did you leave Recruit, and were you contacted by them in any way after you resigned?

Mr. SCHMIDTBERGER. I left Recruit because I was deeply offended at what I was asked to do and increasingly frustrated with my inability to convince my supervisors to change. Perhaps more importantly, as a bilingual employee, I began to realize that my own options were limited. In fact, had I submitted my own résumé to many of these positions, I would have had to screen my own résumé out.

Mr. LANTOS. With a bachelor's degree from Yale and a law degree from Stanford and fluency in Japanese, you would have had to screen out your own application?

Mr. SCHMIDTBERGER. For certain employers' requests, yes, I would have had to.

Mr. LANTOS. Go ahead.

Mr. SCHMIDTBERGER. So I applied to law school and resigned from the company. In my letter of resignation, I explained my frustration with the company and how unfair and illegal I thought their employment practices were. They asked to meet with me several times with their attorneys where I detailed my objections to their practices.

At that time, they requested all the documents that I had with me back and in several written communications, requested those documents back. I did not return them.

Mr. LANTOS. Did you feel there was an attempt to intimidate you?

Mr. SCHMIDTBERGER. At that time, no.

Mr. LANTOS. In retrospect?

Mr. SCHMIDTBERGER. No. Instead I returned the documents to the EEOC in San Francisco.

Mr. LANTOS. Do you know of job applicants who were referred for a position because they fit a particular profile of age, gender and ethnicity, but who were less qualified than others who were "the wrong gender" or "the wrong color" or "wrong age"?

Mr. SCHMIDTBERGER. Yes, I do. With each followup campaign that we performed for employers in Japan, we screened out résumés of people who were more qualified than some people whose résumés we forwarded to the company.

Mr. LANTOS. So your screening really did not focus primarily on qualifications and potential and merit and talent but on getting the right race, gender, age mix in the candidate. Is that accurate?

Mr. SCHMIDTBERGER. That's correct. Our initial screening was to make sure that the candidate pool was of the requested sex, race or national origin and age. After that, we screened the remaining employees—job applicants, I should say—to produce the most qualified applicant pool.

Mr. LANTOS. After you may have screened out the best qualified applicants?

Mr. SCHMIDTBERGER. After the discriminatory screening was performed.

Mr. LANTOS. During the period you worked at Recruit, how many applicants would you estimate were discriminated against and not referred by Recruit solely because they were not of a specific race, sex, or age?

Mr. SCHMIDTBERGER. By their own estimation, Recruit distributes the Shushoku Joho to 17,000 people four times a year. With each campaign, we would receive hundreds of postcards or résumé forms. Of those, anywhere from 5 to 10 per hundred would be of the incorrect race. More than that would be of incorrect gender, and they were all screened.

Mr. LANTOS. Ms. Minushkin, in your lawsuit against the Nikko Corp., they produced affidavits from several women employees saying that they had not experienced discrimination. Do you know whether there was any pressure involved in obtaining these affidavits?

Ms. MINUSHKIN. I know for a fact there was pressure involved. I heard it from people that worked there. They were asking the women employees at Nikko numerous times, over and over again, will you give us a statement, will you give us a statement, say whatever you like, say something noncommittal, say you don't want to be involved, but give us a statement. Over and over again, the women employees were asked. So a lot of people made basically noncommittal statements or they did come out and say that they did not feel discriminated against.

Putting this in context, I believe the suit was filed around September 1987. You may remember what happened in October 1987, Nikko was collecting the statements from its employees in 1988 right when Wall Street started the big layoffs. I believe that there was both implicit and explicit pressure on the employees that made the statements, although some may believe that they were not discriminated against.

Mr. LANTOS. You testified that the Japanese personnel socialized exclusively together after work and that important decisions were made at such gatherings. In what ways, in your judgment, were Americans disadvantaged because they could not participate in this decisionmaking process?

Ms. MINUSHKIN. It was a sales office, and discussions about accounts would go on, and what was the best way to proceed with

certain accounts, what was the best types of stocks to be recommending at this time, investment strategy, ideas that come from Tokyo, also reorganizations of the department.

I had the same experiences with frequent reorganizations. I was at a lower level, so it's different. I was not in line for a management position, nor was I qualified for one, in my opinion, but all Japanese members were included in these types of informal discussions.

The younger members were not making the decisions themselves, but they were involved in the discussions, they had input. I think it was more everyday business matters, but those are important things when you're a more junior member of the department and you're trying to learn to become a professional and to rise up and to gain expertise and confidence.

Mr. LANTOS. You testified that you frequently brought to the attention of management the issues of discrimination as you saw them. What kind of responses or changes ensued?

Ms. MINUSHKIN. There was a lot of discontent among the American employees. As I said, some parts of senior management recognized it. They may not have believed that they were legally discriminating, but they knew that there was discontent.

They said frequently, and we would hear from senior officers from Tokyo, that they were trying to Americanize the company, and by Americanize, implied was get rid of what we may have felt was the discrimination going on.

When I approached my immediate manager and voiced some complaints, I was told I was a complaining baby and I should grow up and not complain. I was told repeatedly, do not complain, be patient, things are changing.

When I spoke to an American head of personnel, brought in to address some of the employment problems, I was told to be patient, don't cause trouble, and as he saw that people were getting more insistent, he got nasty. I can't remember exactly but just be patient, keep your mouth shut, and maybe you're not quite as qualified as you believe. Maybe you're not doing a good job, rather than looking at the basis for what I was saying. But there were some positive responses.

Mr. LANTOS. May I turn to you, Mr. Goyette? What kind of EEOC investigation of your charges preceded their giving you the right-to-sue letter?

Mr. GOYETTE. There were five of us, senior executives, who were dismissed at the time, and we formed a group, sought legal counsel, and our attorney, of course, led us through the process. The initial investigation, I think, was presenting primarily the overwhelming evidence of the numbers of people who had been fired and discriminated against in that filing.

The decision as to who should be fired and who should be retained was based, first of all, upon national origin. We were Americans and were expendable. This overwhelming evidence of the numbers, I think, was the primary evidence given in the initial filing.

Mr. LANTOS. You know, one of the points that several of you made, which certainly I find impressive, is that after you are fired, laid off, unfairly and after a long process, you have an opportunity

to sue. You as individuals with limited resources or depleted resources are pitted against some of the largest corporate giants in the whole world.

Do you believe that you presented strong enough evidence of discrimination to the EEOC that they should have taken your case to court instead of leaving that burden to you?

Mr. GOYETTE. I believe that they followed the process that's most normally followed. This is a routine process. I would have hoped that the EEOC at the time of their initial investigation saw obvious evidence supporting our claims, that at that point the EEOC hopefully would have had more teeth in what their options were.

For example, there continues to be—every one of the Japanese nationals employed here and working under their green card status continues to work here. I would have hoped that the EEOC, possibly working with Immigration, would have given a more complete review to justify that the positions retained by the Japanese employees were not instead of the Americans who were released at that point.

There continues to be green card and work visa applications by DCA and Dentsu. In fact, the new president of DCA, scheduled to start in his position August 1, is right now in the green card application process.

I think there should be a union of the EEOC and possibly Immigration about reviewing existing green cards. I think that would put some teeth into what they could do and give them an immediate cause to take concern when right now, the offending Japanese corporation's biggest assets are their financial resources and time. They can outwait us.

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. Thank you, witnesses, for being here.

I'd like to ask a question specifically to the women on the panel. As we know, women are commonly discriminated against at all corporate levels right here with American companies and American employees.

I'd like to ask you how you would compare, as women, the work environment that you find in the Japanese companies to other jobs which you may have held? How was the discrimination against women in these companies any more or less pronounced than in any other work situation in which you have found yourself?

Ms. TELLER. I think the difference is that in American corporations, it's at least conceded that this is a no-no. Men may believe that women should be kept barefoot, pregnant and on the edge of town, but it's not acceptable, legally or in social terms, to behave that way.

Within the context of the Japanese corporation, it seems to me that, as I believe Congressman Martinez referred to, there is a tradition of subordinate positions for women. However, I certainly think I was discriminated against as a woman, but in the context of exclusion of Americans.

The real power in a corporation is what happens behind the scenes. That's why golf is so important for senior executives where people in a position to display influence, do it on their own terms

and their own time. That was for Japanese, period, the end, no American men, women had any access to that.

So for me, the female discrimination existed within this context, a broader context, of discrimination toward Americans.

Ms. ROS-LEHTINEN. Would you not say when you bring up golf or other social activities that take place at night, yet that would be sadly commonplace at so many other companies, American companies right here in the United States

I'd like to know specifically as a woman, and of course as an American, but as a woman, how do you believe that this discrimination is any more pronounced in a Japanese company than in any other work environment which you ever found yourself in? Or if golf is the problem, that will happen everywhere, sadly.

Ms. TELLER. Yes, I didn't mean that golf was a problem.

Ms. ROS-LEHTINEN. In the legislature in Florida, for example, at the government level, several government officials are finding themselves in a difficult legal problem because of unreported gifts and trips between lobbyists and these legislators for hunting and for golfing and deep sea fishing.

When I was a member during that time, I was not invited either, but I'm saying that happens everywhere, sadly—not that we condone it, but I want to know specifically outside of the social environment, what about the work environment made it more pronounced, that discrimination against women was more pronounced by a Japanese company than any other American company for which you might have worked?

Ms. TELLER. According to what I've been told very specifically, as I said in my document, another woman couldn't—I was an exception. I was rather obvious. I was something extraordinary to be in the position I was in, it was just not considered a woman's position and I assume it was because the man who hired me, an American, believed in me very strongly and pushed for me like crazy, and maybe because I was the first one that had been offered up that way, they were willing to contemplate that, but they did not want any more women in that position, is what I was told.

I was also told that they would not promote me higher than that level because it was absolutely inconceivable in this company for a woman to be head of a department. That's blatant. It's not just a tacit agreement or resistance or a negative attitude, it was the express policy: Women cannot attain this level.

Ms. MINUSHKIN. I have some specific examples. I moved from Nikko to Merrill Lynch in precisely the same job, precisely the same industry, precisely the same clients. I feel that the discrimination at Nikko Securities was institutional, where discrimination that I would see at Merrill Lynch or think that I might have seen, it seems like it was individualized, an individual manner not an institutional basis.

At Nikko Securities, assistant and secretary jobs are exclusively filled by women. At Merrill Lynch, in the same exact business, I had two male assistants, both of whom were college graduates. There are many male sales assistants and secretaries at Merrill Lynch. At the Japanese firm, these "helper" jobs were solely filled by women.

A second thing is that culturally, women in Japan are different than women in the United States. They have different ideas, right or wrong, that fit their way of life on how women behave. Men have those same ideas about women. Women are quieter in Japan. Women are more reserved.

When you're an American woman working in a Japanese company, you are expected to be quiet and reserved. If you're not, you're trouble. At an American company, it's not quite the same. All young American professionals, men and women, at Merrill Lynch are treated exactly the same.

When I was at Nikko Securities, the men were men, the women are little girls, and it doesn't matter your age. There was a woman that was hired there—she was about 50 years old—at a very senior level in our department. When Christmas would come around, various holidays, the men would go out celebrate at lunchtime, and she would be told to come out to lunch with the secretaries and assistants, with the girls. It's institutional as opposed to individual.

Ms. ROS-LEHTINEN. Thank you. Would you care to comment?

Ms. COSGROVE. I've only worked at Japanese firms.

Ms. ROS-LEHTINEN. Since the legal action has started those procedures, what have you heard that the atmosphere has improved in the work environment for women and for minorities at your previous companies?

Ms. MINUSHKIN. Flat out. There are women vice presidents, there's women, I believe, executive vice presidents, there are job descriptions, American employees are allowed to transfer, salaries have been adjusted to competitive levels on Wall Street among men and women.

There may still be discrimination there. It appears looking from the outside, and from what friends inside the company have told me, since the lawsuit was filed, they knew they had trouble in the numbers and they rushed to address it, which I think they should be given credit for.

There may still be some insidious discrimination left. I don't know.

Ms. ROS-LEHTINEN. Is it the same for the other witnesses? Has the situation improved or has it been more repressive?

Ms. TELLER. I think it's more repressive. To my knowledge, there are fewer women, if anything, and no women above a nonexecutive level—I don't know what to call it—copywriter level, junior copywriter level or art director level in my department, and similar in other departments.

Ms. ROS-LEHTINEN. Thank you. Although the witnesses discussed the situation for an American worker and a—oh, I'm sorry.

Mr. GOYETTE. Was that a gender specific question?

Ms. ROS-LEHTINEN. No, no, it was not. I usually look at people eager to get the mike, and I didn't read your signal correctly. I apologize.

Mr. GOYETTE. I'd like to comment on what's transpired at DCA Advertising since we were terminated and our resultant lawsuit. Any senior American hired there, to my knowledge, since then has been asked to sign a closed end contract.

Ms. ROS-LEHTINEN. Closed end?

Mr. GOYETTE. Which means that it's employment at a specific role for a specific period of time, so that in the event they are not to be retained, then their contract just won't be renewed. So that's a little bit different.

Ms. ROS-LEHTINEN. So it's different. One of the witness has talked about a job security for life concept, so this would be changing that idea?

Mr. GOYETTE. The Japanese never needed contracts.

Ms. COSGROVE. I've been told that there's absolutely no change at Ricoh Corp.

Ms. ROS-LEHTINEN. Thank you. Although you had discussed the treatment of American workers in Japanese companies, I'm wondering if you have any comment to make about how Americans in similar situations or similar job levels as you were are treated when they work for your company based in Japan. How is that treatment for an American worker in Japan any different?

You discussed different salaries, different promotion schemes, double bonuses, social interactions after work, housing allowances, language training—all of the benefits that you had said are available to some Japanese workers in the Japanese companies in the United States. Are Americans treated in a similar bonus way when they are working in Japan?

Ms. MINUSHKIN. I know at Merrill Lynch, Merrill Lynch has offices in Tokyo, and the American staff that are sent over there from headquarters, do have the same types of packages. You get housing—you're an expat package, so I think that is common.

Ms. ROS-LEHTINEN. I wondering if the Japanese workers over there are having similar complaints that you are having here, meaning, gee, they are now saying these Americans come over and they are treated much better than we, the Native Japanese, are being treated?

Ms. MINUSHKIN. I think that when I would go to Merrill Lynch Tokyo's office, there would be some of the same types of cultural clashes. I'm not sure that cultural clashes is the issue though. I think the issue is: Are American companies in Japan observing Japanese law, and are Japanese companies in the United States observing law?

I think there is discontent and resentment because of cultural reasons on both sides. That's not the issue. The issue is the law.

Mr. GOYETTE. Yes, a comment on that. I'm not familiar with whether there is title VII legislation protecting employee rights in Japan like we have here. I think that's the real difference, but I think our laws are a condensation of our culture as we evolve and a sense of fairness.

I think culturally, there's a whole different role established in Japan that would then be or not be protected by legislation. So I think that's the real difference. I don't know what the laws in Japan are that would protect foreign rights.

Ms. ROS-LEHTINEN. Just one more question, Mr. Chairman, sort of an open-ended one, and anyone who would care to comment may, and you don't need to each and every one of you.

What ideas or recommendations on a broad scale would you make to eliminate some of the prejudices that you saw? For example, Mr. Schmidtberger had discussed the use of codes and classifi-

cations for recruitment purposes. Would you say that your recommendation would be to eliminate those altogether or to use it as sort of a guide but do not make job determinations based solely on gender or race, et cetera?

In other words, what recommendations, sort of broadly, would you make about your specific jobs which you held?

Mr. SCHMIDTBERGER. I would recommend, of course, that such schemes as the coding system be eliminated completely and that the EEOC and other involved Government agencies pay particular attention to those companies who have a history of problems complying with American antidiscrimination laws.

I should make clear that I don't think that the intent to discriminate, arrogance, or anything like that is the domain of any one country or race or sex. I think these are attributes that individuals have and that can be fostered in certain corporate environments.

With that said, I would recommend that where complaints have been made, that the EEOC be given the authority to investigate however often necessary to make sure the discrimination does not continue.

Ms. ROS-LEHTINEN. Any other panelist?

Ms. COSGROVE. I'd like to see the Office of Federal Contract Compliance become a little more involved with this issue. Ricoh Corp. does about $10 million worth of business a year with the U.S. Government. They classify all of their sales representatives in the field, female representatives in the field, as managers. These women are not managers, they are product sales people. So there is a discrepancy right there in their figures that they are submitting to the Office of Federal Contract Compliance.

I think that, frankly, if we want this to stop, you're going to have to hit these corporations in the pocketbook. Canon is the same way, Sharp is the same way. You have to get the Office of Federal Contract Compliance to step in and look very carefully at the organizational structures and the title ranges and rates for these corporations.

If there is a discrepancy, then they hold the orders, and I can assure you, it will clean up real fast.

Ms. ROS-LEHTINEN. Thank you very much, Mr. Chairman.

Mr. LANTOS. Thank you very much.

Congressman Martinez.

Mr. MARTINEZ. Thank you.

I have a question regarding that last statement on the Office of Federal Contract Compliance. If they do Government contracting, they are required to provide that Office with an affirmative action plan. Do you know if they have?

Ms. COSGROVE. Oh, I'm sure they have, yes. The problem is the plan that's submitted.

Mr. MARTINEZ. The numbers.

Ms. COSGROVE. Right. I'm not saying the numbers are false; I don't know that. I can just say that there's a discrepancy between an internal manager and an external sales representative, and they are titling them the same in order to make them look more equal.

Mr. MARTINEZ. I would suggest then to the chairman that maybe we ought to have a hearing on that particular company about that

particular issue and subpoena those records and then do an investigation of whether those job titles are accurate. If they are not in compliance, we can certainly move to debar them from Government contracting. That, like you say, really hits them in the pocketbook and makes them change.

Ms. COSGROVE. I would suggest you do that for about 15 of the largest Japanese corporations in this country.

Mr. MARTINEZ. Ms. Ros-Lehtinen was talking about American corporations and their discrimination against women. We're not naive as to believe that every American corporation is a role model of affirmative action for the woman, but by the same token, there's a double whammy here and that is women and Americans in these companies.

The other thing is that evidently these corporations don't realize there is a growing anti-Japanese sentiment in the United States of America. So many people are out of work right now and the unemployment rate is going up. In some places, it's higher than the national average, like in the State of California.

You'd think they would realize that so many of our jobs and our basic industries have been lost to Japanese companies, and that they would be more appreciative of that anti-Japanese sentiment because 1 day, they're going to kill the goose that laid the golden egg.

The American market is what made Japan. The American market. If I, as a businessman in my community, appreciated my clientele and customers, I sure as heck wouldn't treat them that way. If I was in that community, I sure as heck would obey the laws in that community so that I would not be brought to light for those kinds of discriminatory actions.

I have a problem with Nikko's testimony. In their numbers, where they are in there testimony here crowing about the lawsuit that you are involved in, Ms. Minushkin, what they don't realize is if you read that final sentence, all that you were not able to do in that case was prove a case for class discrimination. So somehow they think this gets them off the hook.

Ms. MINUSHKIN. If I could respond to that. We settled our case after the judge ruled that the three women that were filing did not provide evidence that we were a class. Nikko did not admit discrimination, it was not found that they did not discriminate, it was just that the three women did not provide evidence for a basis of class formation.

At that point, we were given an offer to settle. If we did not settle, to go forward, if we lost, we would cover their attorneys' fees, our attorneys' fees, and some other things at extreme financial expense. We could not afford to continue, we couldn't take the risk.

I'm a graduate student. The other woman was maybe in law school at the time, maybe she had just finished. Another woman was married with a few children. We couldn't afford to go forward, we wanted to. We were forced to accept the settlement.

Mr. MARTINEZ. I read this brief from the court and where the court expected you to bring forth affidavits from every woman that worked for Nikko was, I think an unreasonable request by the court. In the first place, as much as you stated, when you have a

very shallow job market and you know you can't readily go out and find another job, nobody in his right mind is going to believe that company is not going to take retaliatory action if that person, while in their employ, makes a derogatory statement toward them. That's just a fact of life. It's just as common to employment as anything you can think of.

They have provided us, in their testimony, with their numbers. I'm going to start at the very highest level, executive. There are four. One is a U.S. American, the other three are Japanese, and there are no females. That in itself shows that whether they use these three from Japan because of their rotating staff and they need to for the management of the company, they still don't even have a Japanese woman there.

More than that, they get into some numbers here. Explain to me what, as you understand it, is a professional in that company?

Ms. MINUSHKIN. I thought when I was hired as an administrative assistant, that was sort of the preprofessional thing where you would gear your qualified college graduates. It turns out that the sales trainee position was created as professional. Then I think they more institutionalized it into a title like associate.

Any numbers that you have, by the way, may not correspond to the period that I worked there, and there was also a separate corporation at Nikko that dealt in U.S. Government securities. It was managed separately, it was on different floors. It was staffed almost exclusively by Americans with American managers. I did not work for that part of the company, I worked in the Japanese portion.

One of the things we said in our case is you've got to divide that anyway because that will skew the numbers because a senior American manager was picking all the managers on down, and he was committed to hiring Americans and hiring women.

Mr. MARTINEZ. They may not be the same as you because their managers, they have 34 of them, 20 being U.S. workers. Of those 34, 33 were males and only one was a woman.

The thing I'm trying to get at, is in all of the affirmative action hearings that I held as chairman of the Subcommittee on Employment Opportunities, we tried to break down their information as to who were working people. In the sales office, you're professional in most every instance. So who are the people that are doing the work and who are the people that are really doing the management?

Because we found that not only from minorities but for women, there has been a ceiling to which these people can rise and not above that because that's the closed corporation attitude. That's been true in every situation.

I would imagine from the numbers here, professional, 123, with 92 being U.S. workers. Of the 123, 95 are male and only 28 are female. Even in that, there is a disparity in the numbers if you look at the work force out there and at the percentage of the work force in accordance to male and female.

So these numbers don't prove anything to me, although somehow in their numbers to us they think they've done a great job as they attest to in their testimony.

To get down to technicians, sales and clerical, even if they say that middle category is professional, I still believe those are just

working people in that sales office, and that these others definitely are working people.

It's the same instance in every hearing I ever held on any company. When you get down to the clerical, there are 98 total. Ninety-eight U.S. workers are in that lowest of positions, and 41 are males, and get this, 57 women are at that lowest level. You see the disparity? There are more women at that level than when you go up to a manager's level and you have only one male.

Somehow, these people seem to feel that this is a great improvement. I don't see it as any kind of improvement at all.

Ms. MINUSHKIN. It's an improvement over when I worked there.

Mr. MARTINEZ. Well, yes, they had zero in management I guess. They go through in their testimony and outline the new policy, the Nikko policy of employment opportunities to all persons regardless of race, creed, color, and sex, physical or mental handicap or veteran status. Then they give out the whole 3 pages of their new policy, and then they stand to correct it by important considerations having to do with company and company policy.

It says, "Nikko is similar to many American subsidiaries." They qualify it because American subsidiaries, when they move abroad, move a lot of their top management over there. They go down here with a whole list of things that say their employees have to get extra consideration over the American employees to a point that they get after qualifying all of these reasons why in many instances, they're going to have to hire and give preference to, regardless of the first statement, equal, preference to Japanese employees, and then they say, in short, "Staff from Nikko, Tokyo, has no special advantage over locally hired Nikko employees in any term or condition of employment."

Hogwash. They just don't even realize in their arrogance what they're saying in their own testimony in giving the preference to the Japanese employee.

Ms. Ros-Lehtinen asked about the American company over in Japan and I would say that if in fact that American company did treat its employees a little better, it's only appropriate since here in the United States, the Japanese not only treat them a little better but a whole lot better.

My problem is when you look at the Japanese and their attitude toward us and our companies. For example, Motorola, which builds a better pager, with more quality and that is a little more expensive than the Japanese, had to sue the Japanese to get into their market. A little 6 percent is what they were given initially, but surprising to the Japanese, it's now the lion's share of the market. That's because they build a better quality, but they had to sue to get in.

I don't know of any Japanese companies that had to sue the American market to get in. So what I say is that if there is a sentiment that's developing against the Japanese, it's warranted. And yes, particularly find offense with the Japanese arrogance and attitude because they are not treating us as equal partners, and we have always treated them with open arms.

Their company comes here, their employees come here, their people come here and live in our residences, and everybody opens their arms to them. All of the communities that I'm familiar with

in my district have sister cities in Japan, and we exchange views on that level, and these exchanges that are great for both sides.

Wonder when the corporations are going to understand when you start treating people in an equal manner, that you're going to have as great success there as they have at the other level?

I really feel that when they settled with you, and I don't care what anybody says, that was an admission that they knew they were doing something wrong, whether the judge said so or not. Do you want to comment on that?

Ms. MINUSHKIN. I think that while they may not have believed that they were legally discriminating, I think they believed they knew that there were problems and that the problems were culturally based. I think they did honestly make efforts to address these, but I, in a sense, agree with you, that there are these problems. American companies have it there, the Japanese companies have it here.

I believe I was discriminated against. I did not want a penny of their money in settlement. I make my own money. I don't need theirs. I felt embarrassed to settle and take their money. I wanted to go ahead, we couldn't.

Mr. MARTINEZ. I think you're absolutely right when you summed it up in the last question that was asked by Ms. Ros-Lehtinen. The thing is where there might be cultural differences in each country by each company—an American-owned company there and a Japanese-owned company here—the law is the important part, and they are in violation of the law. I contend that by the figures they furnished us, they are still in violation of the law, and that needs to change.

We need to, like you've said, get our enforcement agencies into high gear in doing something about this. The EEOC only reviews on complaint. They don't go out and review automatically all of these companies to see if they're in compliance. There is some system of compliance in that they should review the affirmative action plans that come in, and if they find discrepancies in those affirmative action plans, they ought to proceed, especially as far as Government contracting is concerned.

I, for one, and hopefully the chairman will join me, am trying to move on that one company to get that review of those job classifications and what those job classifications actually mean and are.

I thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much, Congressman Martinez.

Congressman Shays.

Mr. SHAYS. Thank you. Mr. Chairman, I'd like to thank you for conducting these hearings. I think they are very important. I would say that in some ways I find them the most difficult that I've sat on because they deal with a lot of personalities and they deal with some very emotional issues.

Have you been discriminated against because you weren't qualified or because you were a woman or because you were an American and so on? Those are difficult questions to answer. I'm sure you all have had to wrestle with that as well.

I'm intrigued though by a few comments that were made. One, if a Japanese is relocated from his country of origin, Japan, is it

wrong for that company to give them a housing allowance, to provide housing? Does anyone feel that's wrong?

[No response.]

Mr. SHAYS. I gather that none of you do. In other words, you would expect to see that difference. If I was an American being relocated to Japan, I would expect if I'm going to be taken from my home country and moved to Japan, they're going to have to provide me some kind of incentive like that. Did you want to comment?

Mr. GOYETTE. Yes. I think as long as it's reasonable. If it's a hidden form of additional compensation, though, then I think that would be discriminatory.

Mr. SHAYS. It is going to be a compensation and it's going to be additional but they were located out of their own country. The question I would have is if they gave the Japanese-American an allowance even though they were in their own home, their own country. Then I would see that as a problem.

I was interested, Ms. Cosgrove, in your willingness to talk about one company you worked for and not the other. Are the Japanese batting 50–50 with you?

Ms. COSGROVE. I don't understand your question.

Mr. SHAYS. Did you work for two Japanese companies?

Ms. COSGROVE. Yes, I did.

Mr. SHAYS. You talked about one and you did not talk about the other company. Why not? This is a hearing on whether Japanese companies are discriminating. The question I have is: Do we have an indictment of Ricoh or do we have an indictment of the Japanese? That's ultimately what this hearing is focusing on. It's not whether your particular company discriminated. So what about NEC?

Ms. COSGROVE. I suspect that I made that statement because I filed a litigation against Ricoh Corp. I have not filed against NEC Telephones or NEC.

Mr. SHAYS. That's irrelevant to me, whether you filed or not.

Ms. COSGROVE. It's not to me.

Mr. SHAYS. But it is to me, and you're here for our advantage, not your advantage. The purpose for this is to understand if the Japanese are discriminating as a class and as a general pattern, company by company by company.

My question to you is: Do you have any complaint against NEC, not whether you filed any, but were you discriminated against in that company?

Ms. COSGROVE. Yes, I believe I was. I was paid a lower salary scale than a male counterpart. I had a great deal of responsibility for some very large budgets, and no one seemed to want to promote me to that level. Women were not promoted as readily at NEC, and thinking back now—it may have changed, I haven't been there for 6 years—women were in the lower support roles at NEC.

Mr. SHAYS. Just out of curiosity, why wouldn't you have brought this out in your hearing?

Ms. COSGROVE. I was advised not to by my attorney.

Mr. SHAYS. Why is that?

Ms. COSGROVE. I don't know. I didn't go into that with him.

Ms. TELLER. Could I add a footnote to that, please?

Mr. SHAYS. Sure.

Ms. TELLER. I don't think any of us is qualified to say that every single Japanese company that has a branch here is practicing discrimination.

Mr. SHAYS. No, no, that wasn't my question. I never insinuated that. What I asked was, we had someone who spoke who worked in two companies, two Japanese companies. The only company you can talk about is the company you worked at.

Ms. TELLER. But I believe your question, unless I misunderstand, is, are we talking about Japanese companies at large or certain Japanese companies?

Mr. SHAYS. My understanding of this hearing is—and it's almost like we've declared war on the Japanese—are Japanese companies in the United States discriminating against American citizens; are Japanese companies not following the same rules that American companies would have to follow? It's a serious question.

Our challenge will be to see, as this committee does more work, if there is a pattern company by company. What I found intriguing was that we had someone who only chose to testify on one of the two companies she worked for.

Ms. TELLER. If I can volunteer my humble opinion, I think given the people here and the noise that's being made about people who feel they've been ill treated in certain Japanese companies, it's time to look into it, it's time to proceed.

Mr. SHAYS. That's what we're doing. How many companies have you worked for?

Ms. TELLER. I've worked for a number of American companies and one Japanese company.

I think also that the historic attitudes on the part of the Japanese toward non-Japanese, toward foreign cultures, and toward women insure problems. I'll give you a little example.

I've been studying Japanese now for 2½ years. In one of my textbooks, one of the cultural pieces of information that was given is that the sexes are not regarded as equal in Japan. Women are considered to be in a subservient position, wives to husbands, and so on, and the vocabulary and grammatical forms used by women are much more polite. They are expected to be more polite, they are expected to be deferential toward men.

I think given this background and the complaints that have been raised, there is a real issue here that certainly—I do not believe in witch hunts, I have nothing against Japan, I have a great interest and positive feelings toward the positive aspects of Japanese culture, but there is a real problem.

Mr. SHAYS. I'm forgetting what my question was that made you make that response.

Ms. TELLER. It sounded to me—I'm sorry, I'm getting involved maybe more than I should be, but it sounded as if you had doubts about the fact that there have been widespread problems.

Mr. SHAYS. No. Let me just say something to you. I'm a Congressman on a committee on a very important issue and it is important for me to be fair and to judge what I am hearing. I have some real horror stories in front of me. Your testimony is very compelling.

The challenge for us, though—I don't know you, I don't know your qualifications—the challenge for me is to determine whether what you're saying is—to the best of my ability—based on a pat-

tern or based on your own abilities and whether or not you were qualified for the jobs.

Those are the things I have to wrestle with, and I just started my questioning asking someone why she would talk about one company and not two. I understand that she feels both companies were discriminated—and that to me is significant and that's helpful to know.

So they are not batting 50–50 in your mind, they are batting zero. Both companies you worked for, you encountered discrimination. That's your testimony under oath, correct.

Ms. COSGROVE. Yes. However, of the two companies—now I'm going to talk reality to you. I have two job references left after having left Ricoh. I don't trust anyone to give me a reference, so I was advised by my attorney not to discuss NEC because it's the strongest reference I have left in the job market, but also because I don't think the problems at NEC were as bad as they are at Ricoh.

Mr. SHAYS. So your testimony would be that you really encountered some very real discrimination at Ricoh and more discrimination at NEC than you have in American companies and you notice some similarities between both. Is that correct?

Ms. COSGROVE. I've never worked for an American company. I have no basis of comparison.

Mr. SHAYS. I'm sorry. You said that before, yes.

Mr. GOYETTE. May I offer comment for the Congressman, please?

Mr. SHAYS. Sure.

Mr. GOYETTE. Working in account services, I had the opportunity to deal with many, many companies. I would say that I've dealt with 8 or 10 different Japanese companies as clients, working within my function for DCA and before that for DYR Advertising.

I think we could do a grave injustice by painting all companies that we label as Japanese-owned with the same brush, similar to individuals that we've worked with. I think there are many different styles of operation and that many Japanese companies, I think, are commendable, from my experience, in their use of managers and employees.

For example, the Sonys of the world, the Toyotas, Hondas of the world I think do an admirable job in attempting to understand and apply in their employment practices the laws and customs of this country.

I think the problems we have are with certain companies that either through ignorance or arrogance fail to attempt to do that. This is where we see in certain companies a pattern. I think it has to be examined on an individual basis because there are very, very big differences.

Mr. SHAYS. Thank you. I will say I was very interested in your comment, Ms. Minushkin, that your sense was that the discrimination in our country by Americans was individual, not institutionalized and that you felt, at least in your one experience, that it was more an institutional kind of discrimination.

Maybe I need to say for the record—it's totally unacceptable. The Japanese will have to play by the rules of this country and live by them. Nothing less will be tolerated certainly by this committee and I think by Congress and the executive branch as well, if this is found to be the case.

Mr. Schmidtberger, you worked as a recruiter for one company or two? I was unclear when I read your testimony. One company worked in the same office. Did you work for both?

Mr. SCHMIDTBERGER. No, I was employed by Recruit U.S.A. Recruit U.S.A. and Transworld Recruit were at that time both subsidiaries of a Japanese company called Recruit Co. Limited. We shared the same offices, we shared receptionists and support staff, and occasionally I was directed by the head of the other corporation to generate lists of potential candidates.

Mr. SHAYS. You worked for Recruit, and Recruit was hiring individuals in this country to work in Japan?

Mr. SCHMIDTBERGER. Recruit was directing individuals in this country to positions available in Japan. We did not hire them.

Mr. SHAYS. I'm sorry, but you were looking for prospective employees for Japanese companies in Japan?

Mr. SCHMIDTBERGER. We were looking for prospective employees for Japanese companies in Japan or American companies in Japan or multinationals.

Mr. SHAYS. But in Japan?

Mr. SCHMIDTBERGER. That's correct.

Mr. SHAYS. Transworld was actually looking for employees in this country to work in this country?

Mr. SCHMIDTBERGER. That's correct.

Mr. SHAYS. What I find intriguing about your testimony is that you were actually a screener. How many Japanese firms do you believe, percentagewise, were asking you to discriminate and to, in essence, break the law, to make clear whether they were of Japanese origin or to make clear they were women or men? How many different companies approximately did you help in your year's service. Was it a year?

Mr. SCHMIDTBERGER. It was 10 months.

Mr. SHAYS. I'm sorry. Less than a year, 10 months. How many companies?

Mr. SCHMIDTBERGER. In the 10 months I was there, I had responsibility for two followup campaigns—that was Meiko for which I was principally responsible, and IBM, for which I was an assistant.

Mr. SHAYS. Maybe I should just ask you this before. IBM Japan is a subsidiary of IBM in the United States?

Mr. SCHMIDTBERGER. I would assume so. I have no information on that.

Mr. SHAYS. So this was an American company in Japan and a Japanese company?

Mr. SCHMIDTBERGER. That would appear to be the case.

Mr. SHAYS. In both instances, you found discrimination?

Mr. SCHMIDTBERGER. In both instances, we were asked to perform discriminatory acts.

Mr. SHAYS. Those were the two companies, so there were no Japanese companies that you were asked to screen applicants for other than those two?

Mr. SCHMIDTBERGER. That's correct.

Mr. SHAYS. So in your case, they're batting zero as well. In both instances, you found discrimination?

Mr. SCHMIDTBERGER. That's correct.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much.

Congresswoman DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

Mr. Schmidtberger, did you ever tell the company that they were in violation of U.S. law? Did you make that as a flatout statement?

Mr. SCHMIDTBERGER. I had no direct contact with the prospective employers. They would typically contact sales agents to place the advertisements and would communicate to my supervisors the type of applicant pool that they wished to interview.

Ms. DELAURO. Did you talk to your supervisors about the fact that what was being asked was in violation of U.S. law?

Mr. SCHMIDTBERGER. Yes. On every occasion that I was asked to perform a discriminatory act, I objected to my supervisor.

Ms. DELAURO. What was the response?

Mr. SCHMIDTBERGER. Generally, the response would be that, in the first place, it was not my position to raise objections to my supervisor. In the second place, the decision had already been made. That was what the client wanted, and if the client had not explicitly made that clear, that's what we thought the client would want.

Ms. DELAURO. Was there ever any intimation that there was no obligation to abide by at least the spirit of American law?

Mr. SCHMIDTBERGER. That's correct.

Ms. DELAURO. So, in your opinion, the sense was that there was no need to really have to abide by the spirit of the law here?

Mr. SCHMIDTBERGER. I can't speak as to what was going on in their minds, but my supervisors told me to disregard the law and to go ahead and screen résumés.

Ms. DELAURO. In the documents that you've turned over, you said these were your written documents you had prepared per your conversations with your supervisors when you were about to depart?

Mr. SCHMIDTBERGER. I turned over all of the reply cards and résumé forms that we received.

Ms. DELAURO. Did you turn over those documents to the EEOC?

Mr. SCHMIDTBERGER. Yes, I did.

Ms. DELAURO. What has been the response from the EEOC? Except for turning over the documents, what kind of discourse have you had with the EEOC on this issue? Have they talked to you?

Mr. SCHMIDTBERGER. Yes. They interviewed me several times.

Ms. DELAURO. When was this?

Mr. SCHMIDTBERGER. This would be in the autumn of 1988 and extending into the spring of 1989.

Ms. DELAURO. Has there been any action taken as far as you know? Does Recruit U.S.A. or Transworld, are they still following similar practice, as far as you know? What's transpired?

Mr. SCHMIDTBERGER. Since I left the company, they have both been reincorporated and have new corporate titles. The EEOC filed the lawsuit against both of them which has proceeded over the last 3 years. I'm probably not in a position to tell you the particulars of the suit.

Recruit was cited once for contempt of a court order ordering them not to discriminate and not to destroy documents.

Ms. DELAURO. Did they destroy documents or refuse to come forward with information? Was that the basis of the contempt citation?

Mr. SCHMIDTBERGER. Yes, that's my understanding. To my knowledge, one part of the case, I believe, against Recruit U.S.A. has been settled and I believe the case against Transworld Recruit is still pending.

Ms. DELAURO. Is that coding system still in place as far as you know?

Mr. SCHMIDTBERGER. I have no idea.

Ms. DELAURO. This is more of a general question. In terms of the companies that the several of you have worked for, there was a job classification system or there was no job classification system?

Ms. MINUSHKIN. When I started at Nikko, there was none. Subsequently, they started to formulate one, but a good one wasn't in place by the time I left, although I understand there is now.

Ms. DELAURO. Was there a promotion policy, grievance procedure, any kinds of evaluation procedures that were operating in these companies?

Ms. MINUSHKIN. When I was at Nikko, there was no grievance procedure, there was no procedure for transferring among departments. I tried to transfer to the American-managed departments and was told, you can't transfer, we don't do that. There was no procedure for evaluations, other than your immediate superior, but there was no feedback to you. I got it myself by going up and asking and being told that I was doing a good job and here was another raise or this or that. But there was none of this when I started at Nikko.

In all fairness, they were just beginning to build in the United States at that time. They do have, I believe, these things now. When I left, they were trying to put these in place.

Ms. DELAURO. At Dentsu?

Mr. GOYETTE. At DCA Advertising, we had in place job descriptions and a fairly formal series of performance evaluations and reviews. It was company policy to be reviewed at least once a year. In 4 years where I had a Japanese supervisor, I was never given a formal review. However, some 8 or 9 months before my termination, I was given a significant salary increase and was told verbally that I had been doing an excellent job. All of my Japanese clients liked me, respected my opinions and that I had a long-term career opportunity with Dentsu.

Ms. TELLER. I did receive a formal evaluation which was excellent. I received a large raise, I received a large bonus. I was told I was doing a splendid job.

Ms. COSGROVE. Ricoh Corp. does have a yearly evaluation system which, to the best of my knowledge, they take very, very seriously. I never spoke to anyone at Ricoh that had not been evaluated on a yearly basis. I was evaluated on a yearly basis and all of my evaluations were well above average.

Ms. DELAURO. Did you utilize those evaluations in discussions with your supervisors about promotion or being overlooked for promotion or being demoted, in your case, Ms. Cosgrove?

Ms. COSGROVE. Yes, I did. I don't think that particular person gave much credence to these evaluations.

Ms. MINUSHKIN. I was told to be patient, to be patient, to be patient.

Ms. DELAURO. That's a question I had for you, Ms. Cosgrove. You were with Ricoh for 6 years. I guess my question is why did you stay for 6 years?

Ms. COSGROVE. How dumb are you, right? The writing should have been on the wall after the second year. Much like Ms. Minushkin, I was told to be patient. I felt as if I was learning something daily when I worked on things, so it wasn't a total loss, but I was told, be patient, the next reorganization has your name on the next promotion, things along those lines.

You reach a point, and I don't know where it was, but I think it was after my third year, I thought, gee, I've invested this much, maybe I should be patient, maybe I am pushing too hard.

Ms. DELAURO. Let me ask you about the responsiveness of the EEOC with any of the documents. Did any of you get information to EEOC in terms of documentation of your situation and what happened in your specific cases?

Mr. GOYETTE. Yes. We had sent all of our documentation to our attorneys, and it was collected among the five people who had filed suit. We're a little bit early yet, at least by the Government's definition of what's early, in the process. We've only received our right-to-sue letter July 1, so we're in the interrogatory and discovery phase where we can actually hopefully access more specific information in the files.

Ms. DELAURO. A general question. As Congressman Shays says, we have to try to get some sense of what's happened and then try to sort out what kind of directions we ought to go in.

In your views, where is the breakdown? Where do you see the fault lies. I know Ms. Cosgrove talked about Federal contract compliance, where do we need to strengthen the pieces here in order to prevent this discrimination against American workers, against women?

There is one more question I have before that with the women. Were there Japanese women in the companies that you worked in, and what was their status and position? Did they have similar kinds of experiences that you faced?

Ms. MINUSHKIN. There was a Japanese woman in my department. If anything could be lower than being an American woman, being a Japanese woman would have been it, but later on, Japanese women started to come over as rotating staff from Tokyo. They were higher status. She was considered part of the U.S. staff but Japanese but female.

Ms. COSGROVE. Ricoh Corp. has several Japanese women in managerial positions. I believe one of their subsidiaries has a Japanese woman in a director's position, which is the only female director in the company.

Ms. TELLER. At DCA, there was an older Japanese woman in a kind of assistant, director—she was not junior but she was more or less in a junior art director's position. There was a Japanese woman in account management who has been made a vice president since we were fired.

The feeling that I got from her was that it was not easy being a woman. The Japanese part was OK, but being female was certainly a difficulty for her.

Mr. GOYETTE. There were a few women in the account services area of DCA Advertising. The most senior was just promoted to a vice president on specific accounts.

There was another account executive woman who I think did a stellar job. In fact, as her supervisor, I had submitted her for one of the presidential awards to be given at the end of the year in 1989, December 1989. I was told by my supervisor, who was Japanese, that no way in the world would she be recognized, that she just wouldn't.

I gave him specific evidence—she was working an 80-hour week, she would work weekends, frequently 14- 16-hour days, unbelievable. Her health was failing and he said, no, we just couldn't recognize her, and I'm sure it was because she had a different role in his mind.

Ms. DELAURO. I'm going back to my concluding question and ask you to be brief because we've got to vote but in terms of where the faults lie in the system, where can we tighten it up, how can we make the difference for cultural distinctions versus the violation of what is law?

Ms. TELLER. First, I think we really do have to recognize that there is a problem. There is a big dissonance between Japanese expectations of women and the way they regard people who are not Japanese, and the American point of view, in enough instances so that it becomes a problem.

I have great hopes for the future. I'm an optimist by nature. I think there are wonderful things—there are wonderful effects that can result from a real American-Japanese, Japanese-American collaboration and equal collaboration. I don't think it can just be left to chance. I think there needs to be an aggressive, positive recognition that there is a problem here, that there is a gap. We need education, we need discussion, we need to know that there is a problem and there should be a lot of contact and a lot of attention given to it.

Then I think there does need to be some punitive legislation. I think we need help. People like us are really stuck between a rock and a hard place. It's not fair to say to an individual at a time when their personal resources are depleted, you carry the burden for the rest of the country, you go impoverish yourself in the courts to make an example of something that went wrong.

Ms. MINUSHKIN. I think better enforcement of existing statutes and recent Supreme Court decisions have made it a lot more difficult for Americans to bring any type of discrimination suit. If the EEOC rather than just be an enforcement arm could actually take proactive measures rather than waiting for cases to come, having investigators that see hundreds of cases a year whip through your case, instead of having it be an adversarial, legal competition, if the EEOC would take a proactive stance in enforcing its laws, it would prevent 23-year-olds having to go up against the second largest securities companies in the world. It would prevent people from having to use their resources, and it would prevent a lot of the bit-

terness because you wouldn't have a legal battle. You would have the two sides working for change.

Ms. DELAURO. Anybody else?

Mr. GOYETTE. I would suggest that you consider that the EEOC become more vigilant and more active, shorten the time process. I think if after the initial investigation there is found to be at least significant evidence of discrimination and the process now allows for the right-to-sue letter to be forthcoming, at that point to get involved and to put additional penalties that would be felt by the offending company.

That could mean that the EEOC activate investigation into the affirmative action plans within the company so that the managers, the Japanese managers, owners of the company, and other employees there are aware there is a suit in progress so that they would have the opportunity to air their opinions, even though they are still employed, if in secrecy they could give you additional information and testimony.

The other thing is to change your Federal legislation to allow for punitive damages and allow for punishment, pain and suffering, not that we're after additional money just for that sake, but there is then some teeth in it and there is additional interest, that the expenditures of the offending company in that case is not just time and virtually the unlimited legal fund that they have. Put some teeth into it and penalize them. Tie it into other Government agencies like Immigration.

Ms. DELAURO. Thank you, Mr. Chairman.

Mr. LANTOS. I want to thank my colleague from Connecticut.

Let me just say to all five of you, you have done a major service to vast numbers of American citizens who are obviously in a situation similar to yours. I think you have also done a major service for United States-Japanese relations, because as a result of these hearings, I expect a dramatic improvement in the performance of the Japanese companies which would lead to better United States-Japanese relations.

There is a footnote to you. The University of Pittsburgh is a very fine institution. You should be proud to have graduated from it.

I want to thank all of you. The subcommittee will be in recess for 5 minutes.

[Recess taken.]

Mr. MARTINEZ [presiding]. We're going to get started again. The chairman is on his way.

[Witness sworn.]

Mr. MARTINEZ. It's nice to see you again, Mr. Kemp. I see you in a different role now than the last time I saw you. We're welcome to have you before the committee again. Would you identify who is accompanying you today?

Mr. KEMP. Yes. On my extreme left is Jim Troy, Director of the Office of Program Operations; beside him is Thomasina Rogers, the Commission's legal counsel; and right beside me is Bill Ng, our deputy general counsel.

Mr. MARTINEZ. Very good. I will formally introduce you. This is Evan Kemp, Chairman of the Equal Employment Opportunity Commission. With that, Mr. Kemp, your written testimony in its entirety will be in the record. You can proceed any way you see fit.

STATEMENT OF EVAN J. KEMP, JR., CHAIRMAN, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACCOMPANIED BY JAMES H. TROY, DIRECTOR, OFFICE OF PROGRAM OPERATIONS; THOMASINA ROGERS, LEGAL COUNSEL; AND BY WILLIAM NG, DEPUTY GENERAL COUNSEL

Mr. KEMP. Good afternoon, and thank you for inviting me to testify today on behalf of the U.S. Equal Employment Opportunity Commission.

As you can see from my submitted testimony, detailed evaluations of private sector employment practices are extraordinarily complex. EEOC's mission is enhanced when the Federal Government presents a united front in the effort to fight illegal discrimination. Your attention to this matter reminds all employers that they should look seriously at their own employment practices, eliminate discriminatory practices, and cast the widest possible recruitment net to ensure fairness.

Moreover, EEOC is an historically underfunded agency. There is no way we can review the employment practices of each and every employer doing business in the United States. In fact, title VII makes us a charge-driven agency, not an agency that conducts compliance reviews such as the Labor Department.

Public discussion of issues involving employment practices encourages employers to police themselves. It reminds them of the Federal Government's commitment to investigate every charge of job discrimination reported to us and prosecute violations to the fullest extent allowed by law.

The EEOC does, however, have reservations about targeting employers for scrutiny based on national origin. Doing so is contrary to our mission, which is to enforce the laws against job discrimination fairly and even handedly without regard to the factors that we tell employers to ignore, including national origin.

Therefore, the Commission will not be tempted to draw any conclusions about Japanese employers as a group. We will merely present the data you requested and the limitations on the data which must be considered in any responsible interpretation.

Before summarizing our findings about job discrimination by Japanese-owned companies in the United States, I must discuss the limitations of our data. First, the EEO-1 form, which we use to collect work force data, does not require companies to identify their owners' nationality. Yours is the first congressional request in the EEOC's 26-year history for a comparison among hiring practices of companies based on the owners' nationality.

The Commission, as a law enforcement agency, does not have the resources to collect and analyze this information on a continuing basis.

The second limitation we face is that only about 6 percent of employers subject to Title VII of the Civil Rights Act of 1964 are required to submit information to us about employment of minorities and women. Our data fails to reflect differences between employment practices at large and small companies and among the labor pools from which large and small companies draw.

Third, our EEO-1 forms are completed by company officials and are unverified. The number of people placed in various job classifi-

cations—for example, the number of people put in the "professional" or "officials and managers" category—may vary among companies and management styles.

Fourth, many factors not related to job discrimination may affect decisions by foreign companies about where to locate U.S. sites and about which companies to purchase. The Japanese companies in particular, because they are primarily new entrants, would be expected to locate where tax and wage rates remain relatively low. Meanwhile, some of our Nation's minority groups are located in greatest numbers where tax and wage rates are high.

Geographical factors may explain much of the minority employment disparity between United States- and Japanese-owned firms. We do not have the methodology to take these disparities into account.

Fifth, with respect to charges and lawsuits against Japanese companies, we are talking about an extremely small universe. It would be a mistake to put too much faith in conclusions drawn from so few cases. Of about 900 active cases in litigation, only a handful involve Japanese employers.

With those warnings, let me summarize the information you requested.

Employment practices of foreign-owned companies are becoming more important to Americans. Foreign-owned companies that we identified employed 530,000 people in 1989, up from 350,000 in 1980. Japanese-owned firms that we identified employed 72,000 people in 1989, up from 20,000 in 1980.

Overall, foreign-owned companies tend to employ more minorities than U.S. companies. In 1989, minorities represented 22 percent of overall EEO–1 employment. In non-Japanese foreign-owned companies, the work force was 25 percent minority. In Japanese-owned companies, minorities made up 27.6 percent of the work force.

The Japanese companies we identified have more employees of Asian and Pacific Islander origin than other companies. Thirteen percent of the work force at the Japanese-owned companies we identified was classified as Asian or Pacific Islander, compared to 2.6 percent of all companies surveyed.

Employment of blacks in Japanese-owned companies was 8.4 percent in 1989, compared with 12.5 percent in the full EEO–1 universe. Employment of Hispanics in Japanese-owned companies was 6 percent in 1989, compared with 6.5 percent in the EEO–1 work force. The employment of women in Japanese-owned companies was 38.5 percent in 1989, compared to 46.2 percent for all EEO–1 companies.

The disparity was particularly large in "officials and managers" positions. Overall, nearly 30 percent of these positions in the EEO–1 work force were filled by women, but in Japanese-owned companies, only 16 percent were filled by women.

During the 1980's, the employment of minorities and women increased at a faster rate in Japanese-owned firms than in other foreign-owned companies or at United States companies. For example, blacks went from 2 percent to 3 percent of officials and managers at the Japanese firms we identified. All of this data is available in the charts supplied with my submitted testimony.

It is important to realize that the Commission does not enforce our Nation's civil rights laws by looking at the EEO–1 numbers and telling employers to measure up. We go about our business by investigating specific charges of discrimination and taking these charges to court when necessary.

I will now turn to our experience in this area. Of the 59,426 job discrimination charges the Commission received in 1990, we have identified 115 charges against about 35 Japanese-owned companies. The charges against Japanese-owned companies generally follow the profile of all charges.

About 37 percent allege race discrimination, 34 percent raise sex discrimination, and 29 percent involve age discrimination. Japanese companies are more likely to be charged with national origin discrimination. Fourteen percent of the charges against Japanese-owned companies include national origin as a basis. By contrast, 11 percent of charges filed against all corporations raised the issue of national origin.

That may be at least partly caused by the high percentage of Japanese-owned firms in California and New York, where between 20 and 25 percent of charges involve national origin discrimination.

In investigating these charges, EEOC finds that the violations uncovered are similar to those discovered in domestic corporations. While charges must be kept confidential to comply with title VII, we may speak more openly about lawsuits and legal briefs we have filed that involve Japanese companies.

One example you asked about was our case against Recruit Corp. In this instance, we received information that the company was discriminating, so we drafted a charge that would allow us to investigate the allegations. After we served the charge, we learned the company had begun to destroy records, so we sought a Federal court order to close Recruit and allow us to seize the evidence. This is the first time a court granted such an injunction for EEOC.

We found that Recruit was using secret codes on internal documents to illegally indicate employer preferences for workers of a particular age, sex, race, or national origin. We settled the Recruit case, and you may be interested to know that part of the settlement includes an agreement for Recruit to fund two job discrimination training seminars in Japan.

Mr. LANTOS [presiding]. Mr. Chairman, in my opening remarks, as you know, I questioned the wisdom and judgment involved in that.

Mr. KEMP. And compared it to Ms. Helmsley.

Mr. LANTOS. I just find it remarkable that a company which is so palpably guilty of discrimination would——

Mr. KEMP. Congressman, we do have veto power over who they retain to do this training.

Mr. LANTOS. Well, it's not a question of giving veto power over whom they hire, I think they can be made to fund these things, but it does seem to me that my analogy that this is like having Leona Helmsley provide seminars on how to fill out income tax forms is an appropriate analogy.

Mr. KEMP. I think that if we didn't have veto power over it, it would be a perfectly correct analogy, but I think with veto power over who does the training, I think we do control that situation.

Mr. LANTOS. Well, while we are on this subject, how do you justify the terms of the EEOC settlement with Recruit? How did you arrive at a figure of $100,000?

Mr. KEMP. We settle about 10,000 cases a year in the conciliation stage. We settle another several hundred each year after going to court. The settlements are not reviewed by the Commission, but I do have our deputy general counsel here who might speak to that.

Mr. LANTOS. I would be happy to hear him. Would you identify yourself, sir?

Mr. NG. Yes, sir. My name is William Ng. I am deputy general counsel of the EEOC.

The responsibility for conducting enforcement litigation rests in my office, sir, and this case, in specific, was conducted by our San Francisco legal division. I spoke to the regional attorney this morning concerning this committee's questions regarding this case.

Mr. LANTOS. When was this case settled approximately?

Mr. NG. It was about June, sir.

Mr. LANTOS. June of this year?

Mr. NG. Of this year.

Mr. LANTOS. Before you go on, I just want to set the framework.

We had a witness earlier this morning—you heard the testimony, I take it?

Mr. NG. I wasn't available this morning.

Mr. LANTOS. Well, let me tell you what the testimony was. As I recall, the gentleman who testified indicated that he thought there were hundreds of individuals who were discriminated against. The $100,000 figure seems absurdly low—it's not even a token—and I'm wondering how you arrived at it?

Mr. NG. Let me just try to explain as clearly as possible.

This case, although denominated as Recruit, really involves two employers with a common parent. There is Recruit U.S.A. and there is Interplace. Interplace is where I believe the witness this morning was testifying——

Mr. LANTOS. No. He worked for Recruit.

Mr. NG. Well, the Recruit part of the case, Mr. Chairman, did in fact settle about a month ago. The second part of the case, the Interplace case, is still going on. Recruit U.S.A. was in the business of finding applicants for employers in the country of Japan. Interplace was in the business of finding applicants for employers in the United States.

Mr. LANTOS. I know what they were doing. My question is a very specific one. It's a different one and I would be grateful if you'd address yourself to my question which I shall now restate.

We had testimony under oath that there were large numbers of potential discriminatees—people who were discriminated against—by Recruit U.S.A. I would like to ask you to give us your best estimate of what that number is?

Mr. NG. We were only able through our search of the available employment records to identify roughly 16 persons who met the qualifications that would otherwise have led them to be employed by a firm that Recruit was retained by.

If I may add, Mr. Chairman, the jobs at issue and the persons at issue were, first, bilingual, and secondly, they were primarily engineers. If I may also add, the case that still has not yet been settled,

the Interplace portion of the case, is still in negotiation. We frankly expect that this case will yield a much higher back pay settlement.

The third part of the Recruit case is the fact that because these individuals were highly skilled, technical individuals who were also bilingual, they were able to find alternative employment relatively quickly, even though they were rejected by Recruit. Therefore, the amount of lost earnings that they suffered was relatively limited, even though—as was testified this morning——

Mr. LANTOS. I don't think that's the issue at all. I think you missed the whole point. We had testimony this morning from an individual under oath who worked for this company that his job was to screen out people who didn't fit the nationality, race, sex, and age profile of the potential employer. This is a blatant violation of American law, and it is a blatant violation of the spirit of equal employment opportunity.

The job this gentleman had, a graduate of Yale and of Stanford Law School, a very intelligent, articulate and sincere human being, who was revolted by the assignment his superiors gave him, that as people applied for these jobs, he had to screen out all those who didn't fit the discriminatory profile of the employer. That's the issue.

My question is, how on earth did you arrive at a $100,000 settlement, which is a token amount? The fact that these people may get jobs elsewhere, maybe they will and maybe they won't.

Mr. KEMP. I do think I'd like to interrupt right now. What he was talking about was the cases that are still open. What Bill Ng was addressing was the people who were being recruited by Japanese firms to work in Japan. There are two aspects of this case.

Mr. LANTOS. I understand that. We had testimony concerning——

Mr. KEMP. But he talked about IBM, and I remember a couple of other people he mentioned.

Mr. LANTOS. He worked for Recruit U.S.A.

Mr. KEMP. Yes, but he did mention IBM.

Mr. LANTOS. That's right. IBM was one of the clients of Recruit U.S.A.

Mr. KEMP. IBM is not a Japanese company.

Mr. LANTOS. IBM, Japan.

Mr. KEMP. No, but it——

Mr. LANTOS. It was IBM, Japan that was doing the hiring.

Mr. KEMP. But clearly IBM, Japan is subject to our laws. But a Japanese company incorporated in Japan that doesn't have any connection to this country is not subject to our laws. I think that's where I'm trying to set the record straight.

I wish we'd had a little bit of notice on this. I just heard that you were going into it. We're very proud of the Recruit case. It's the first time that we've ever gotten a court order to stop somebody from tearing up the evidence. We think that the Recruit case resulted in an excellent settlement.

Mr. LANTOS. Let me read from the testimony this morning and both of you are welcome to comment. "To prevent any misunderstanding"—this is from the testimony of Mr. Paul Schmidtberger earlier this morning under oath—"To prevent any misunderstand-

ing, a memorandum entitled, 'IBM Project Confirmation' that was written in Japanese, was taped to the wall directly opposite my desk by my supervisor, Mr. Ureshino.

"That memorandum specified that IBM sought to hire approximately 25 people in the interview sessions. Point one of the memo stated that applicants would only be considered if they were under 35 years old. Point two stated that men and women would be considered equally. Among other job qualifications, point three explicitly stated, 'Foreigners are no good.'" That's about as blunt as you can get—"Foreigners are no good."

It was parenthetically explained that this was IBM, Japan's current policy. The specifics of this policy were outlined in the next sentence, which reads, still in Japanese, "White people, black people, no, but second generation Japanese or others of Asian descent, OK.

"This memorandum remained taped to the wall until July 13, 1988, when I removed it."

I cannot conceive of a blatant job discrimination more clearly spelled out than this.

Mr. KEMP. I can't either. I think that is the case that is still in litigation. We just learned this morning that you had such an interest in this case, and we will respond for the record. But it is two cases.

I think that we did have veto power over who is going to give this training session in Japan which I thought was very adequate protection. I think you took it out of context.

Mr. LANTOS. What kind of staff do you have to supervise this? I think you would be much better off, Mr. Kemp, if you were to say, "It was a bad mistake on our part to give the training job to a company which engages in such blatant and prosperous discrimination."

Mr. KEMP. We're not, and we brought up facts and you're ignoring those facts. They're funding, they're paying for it, but we have veto power over——

Mr. LANTOS. Who selects the training program? Who selects the people? Who selects the curriculum? They do.

Mr. KEMP. We have a veto power over it.

Mr. LANTOS. You still don't see anything wrong in having a company which was found guilty of blatant discrimination given the task of conducting seminars on how not to discriminate?

Mr. KEMP. I do think that historically EEOC has been an underfunded agency.

Mr. LANTOS. I can't hear you.

Mr. KEMP. I think historically EEOC has been an underfunded agency. I can imagine when the 1964 Act was being debated that a northern Congressman went to a southern Congressman and said, if you vote for this act, we promise we will not ever vote adequate money to fund the agency that's meant to enforce it. We're responsible for more than 100,000 cases a year. We're responsible for a variety of people that are protected now.

If you just take the number of cases we're responsible for and divide it into our total budget, it's less than $2,000 a charge.

Mr. LANTOS. Allow me to quote from your own testimony because you really are dead wrong on this. This is what you're saying, "Our

agreement with Recruit"—this is your testimony—"also requires the company to hold"—not to fund, to hold—"two equal employment opportunity training seminars to be held in Japan. These seminars are to educate Japanese managers who are coming to the United States on the country's fair employment laws." There is not a word here about veto power; there is not a word here about funding.

Mr. KEMP. I didn't know you were going to go into such particulars. We're very proud of this case. We didn't know you were going to attack it. Jim would like to say a word.

Mr. TROY. I'm Jim Troy, Director of Program Operations. Maybe I can clarify some of it.

Mr. LANTOS. Deal with the direct issue I've raised, because I'm not getting an answer from the Chairman. The direct issue I'm asking is this. Here is a company found guilty of blatant employment discrimination. Are we in agreement on that?

Mr. TROY. Yes.

Mr. LANTOS. Is that company qualified therefore to hold seminars on how to comply with equal employment opportunity laws?

Mr. TROY. Congressman Lantos, we don't know and don't have the wherewithal to do anything different. This training has to be——

Mr. LANTOS. Of course you do. You don't have to give them the charge to hold these seminars.

Mr. TROY. This training is going to be in Japan. It's going to train people to come over here to know our laws and what's expected of them when they get here.

Mr. LANTOS. And they broke those laws.

Mr. TROY. They had already broken them before. The training is to make sure that others who come over here know the laws, know how to apply the law to their work situations and know not to do what was done before.

The gentleman who spoke to you this morning brought the case to us, if I remember correctly. We did find discrimination in the case. Now the idea about whether $100,000 is too small or not, I'm sure your counsel knows that once you render the finding, you have to find the class of people who experienced discrimination.

Even though he might have said there were thousands of people that the policies affected, we have to find the class after the finding. We were only able to find 16 people. Having found 16 people, the law that this body passed—Title VII of the Civil Rights Act states you have to make the people whole, meaning you have to find out what they lost.

If they were unemployed for 1 year, then backpay is good for 1 year. If they were unemployed for 5 weeks, then backpay is only good for the individual for 5 weeks.

What we found was that the individuals that we were able to identify through normal means that would apply not only to Japanese-owned companies, but to other American companies, had apparently gotten jobs in short periods of time after not being not referred by Recruit, and therefore, the amount of backpay was small.

As it stands right now, we only knew of your interest in the specifics of this case when you raised your statement this morning. We will be glad, exceedingly glad, to get the full interpretation of

the agreement and submit it to you for the record along with any statements that you would like for us to make.

Mr. LANTOS. I look forward to that, but let me pursue the matter a minute further.

There are many American law schools, distinguished law schools, that have strong involvements with Japan. Would it not have been wiser to have the training seminars on employment nondiscrimination be offered by a distinguished American law school rather than the Japanese company that broke the law?

Mr. TROY. The idea is for the Japanese company to employ someone to do the training for them and to fund it, not necessarily for them to do it themselves. When they find the people to do it, then we have veto power if we do not believe them to be capable of showing the law as it is and applying the law to situations.

We can stop that. We can go back to Recruit and say, these aren't the people. Maybe hindsight is 20–20, maybe it is true that we could have talked to a law firm. At this time, we were trying to settle this case out of the 800 cases we have in court, out of the 400 we settle every year.

As the Chairman told you, based on our staffing, we have very little time to go through four or five iterations of what we possibly can do when there is an acceptable settlement before us.

Mr. LANTOS. How much did EEOC spend litigating the case with Recruit U.S.A. before settling it?

Mr. TROY. That will be part of our response for the record.

Mr. LANTOS. What's your ballpark estimate?

Mr. NG. Mr. Chairman, I would not be able to give you a ballpark estimate, because I don't believe this case required a great amount of support services or expert services.

Mr. LANTOS. You'll submit the figure?

Mr. NG. We will be happy to.

Mr. LANTOS. Thank you.

Go ahead, Mr. Kemp.

Mr. KEMP. I also would like to say that in 1985, our budget allowed for $7,800 per case. In 1990, we had $4,375 per case. In 1992, we had $5,000 per case. Of the 871 suits in litigation right now, 5 percent of those suits take 60 percent of the total funds. That knocks us down to about $1,400 per case.

Mr. LANTOS. Now, are you asking for a bigger budget; is that your point?

Mr. KEMP. We did.

Mr. LANTOS. Is OMB supporting that request?

Mr. KEMP. Yes, and it was cut by Congress 9 out of 10 years during the 1980's. We have gotten increases, slight increases, in the last couple of years.

Mr. LANTOS. As you well know, Mr. Chairman, I supported your budget request.

Mr. KEMP. Yes. Also, our investigators are closing over 80 cases per year, 80 cases per year. They are spending less than 3 days on a case. In the civil rights office at Education, they are closing two cases a year. At HHS, it's three cases per year. I'm just asking for a more equitable division of the civil rights dollar.

Mr. LANTOS. Well, we certainly will support your request for the necessary staff to get the job done. Go ahead.

Mr. KEMP. Unfortunately, the violations in the Recruit case are not unique to Japanese firms. Many U.S. employment agencies have also used illegal codes on job order forms, and litigation is pending against several of these firms in North Carolina and——

Mr. LANTOS. We can't hear you, Mr. Chairman.

Mr. KEMP. Many U.S. employment agencies have also used illegal codes on job order forms. Litigation is pending against several of these firms in North Carolina and New York State. We have almost 300 similar charges around the country right now.

More generally, EEOC has taken an active role in a series of lawsuits, interpreting the 1953 Treaty of Friendship, Commerce, and Navigation between the United States and Japan. It has been the Commission's position that the FCN Treaty cannot be a shield against illegal discrimination.

In *Avagliano* v. *Sumitomo Shojo America, Inc.,* EEOC argued that the employer could not reserve its management positions for Japanese males, despite the company's argument that it was protected by the FCN Treaty. The Supreme Court agreed with EEOC. We addressed the same issue in *Spiess* v. *C. Itoh & Co.*

More recently, EEOC filed an amicus brief in *Fortino* v. *Quasar Co.* This case is currently before the Seventh Circuit Court of Appeals. In Fortino, the plaintiffs have alleged that they were laid off because of their age and American origin. Quasar argues that their case is different from the other two FCN cases because they are not incorporated in the United States. We believe that should not matter because Quasar is a division of an American corporation, and, therefore, they have no right to ignore our discrimination laws.

In conclusion, Mr. Chairman, the single best way to combat job discrimination by foreign and domestic companies is to make the people who make the personnel decisions aware that they must hire in compliance with our Federal, State, and local statutes that prohibit job discrimination.

Employees and applicants must know that they have a right to have their charge heard if they are discriminated against. There must be thorough and efficient investigations to determine whether the law has been violated. There must be consequences for violating the law.

That is the essence of what EEOC does. It is a mission we are proud of, and it's one that we are always striving to do better.

Again, thank you for holding this hearing, Mr. Chairman. I would pleased to respond to any questions.

[The prepared statement of Mr. Kemp follows:]

Prepared Testimony of Evan J. Kemp, Jr.
Chairman
U.S. Equal Employment Opportunity Commission

Subcommittee on Employment and Housing

Committee on Government Operations

U.S. House of Representatives

July 23, 1991

Thank you for the opportunity to testify today. You have requested information on employment discrimination by Japanese-owned companies operating in the United States. I hope my testimony sheds some light on this complex issue.

The attached data and the data submitted earlier, which concerns the employment profiles of Japanese-owned corporations operating in the United States, is not systematically collected, maintained or analyzed by EEOC on the basis of whether a corporation is domestically or foreign-owned. EEOC wishes to make clear that when we collect data from corporations profiling their work forces, the Commission does not routinely compare foreign corporations to domestic corporations or more specifically, Japanese corporations to companies owned by citizens of other countries. EEOC does not mandate or suggest that corporations identify themselves as domestic or foreign controlled when filing profiles of their work force, nor do we ask that employers specify which group of nationals may own the company.

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Besides this obvious problem, there are a number of other reasons we cannot draw conclusions about whether Japanese companies are more likely to discriminate than other companies. The form we use to collect data from employers about their employees is the EEO-1. These forms are used to collect employment data from private employers by sex according to five race and ethnic categories, cross classified by nine broad job categories. It is a snap shot of an employer's work force on one particular date. It does not show new hires or job promotions. Because the data is self-reported, the way that people are placed into the nine broad job categories may vary depending on the organization of a company or its management style.

Private employers have had to file EEO-1 forms since 1966. Every private employer subject to Title VII and having at least 100 employees is required to file them. Additionally, Federal contractors having 50 or more employees and contracts of at least $50,000 are also required to file EEO-1 reports. Approximately 38,000 employers file these reports. This is about six percent of all employers subject to Title VII. It is estimated that these employers cover about 65 percent of all private payroll employees protected by Title VII, or about 41.4 million out of a total of 63.8 million employees. EEOC is responsible for the distribution and collection of the EEO-1. From the EEO-1, the Commission and other federal, state and local agencies can determine how many blacks, Hispanics, Asians or women are employed by a particular company. The reports, when compared to prior submissions, show whether a company's work force is expanding or contracting. These reports also inform the government, within broad job categories, how many women or minorities there are in particular jobs. When the reports are aggregated, the data base shows how many minorities and women are employed in particular industries and how many are employed in various geographic locations. Aggregated reports also show industry trends, most notably growth or decline. They do not show information about smaller companies, where many new jobs are being created today.

One other possible pitfall in interpreting the data we have provided lies in the fact that Japanese companies are relative newcomers to the United States. We can be fairly confident from reports in the popular press that these companies have selected their locations to take advantage of low tax and wage rates. Unfortunately, the minority groups we are most concerned about are over represented in areas where there are high tax and wage rates. Therefore, minority representation may be lower in companies new to the United States that have discretion about where they will locate. In sum, the Commission believes that making generalizations based on the data we have provided has the potential to mislead casual observers and could be easily used either to support or reject criticism of Japanese hiring practices. It should not be used for either purpose.

Also in this statement, I will cite data concerning employment discrimination charges filed by employees and job applicants against employers. Here too, the agency has not routinely analyzed charge data with a view to comparing domestic corporations to foreign corporations. In the agency's 26-year history, this is the first time we have been asked to compare the "track record" of foreign corporations to domestic corporations. Moreover, I should caution that even if EEOC did routinely compare the track records of, for example, Japanese companies to German companies or U.S. firms to Canadian firms, this practice would raise difficult issues of selective enforcement, protracted legal interpretations of commerce treaties, and ultimately entangle civil rights with foreign policy considerations.

With these caveats, I shall discuss the information you requested:

1. The hiring and promotion patterns for women and minorities by Japanese-owned firms in the U.S., compared to other foreign-owned firms in the U.S. and to our general data base.

2. Statistical data on minority hiring and promotion practices broken out by minority groups from our general data base, and for Japanese-owned firms in the U.S., with a description of the minority composition of the hiring area.

3. Trends in minority hiring in the 1980s by Japanese-owned firms operating in the U.S. Are the proportions of minority hires going up? What categories of minorities show increases or decreases over the decade?

We have provided the Committee with this information, specifically a comparison of the aggregate employment profiles of approximately 39 Japanese-owned corporations compared to the employment profile of all workers employed in this country by employers required to submit an EEO-1 form to EEOC.

For today's hearing, the Commission identified those corporations which we knew to be Japanese-owned by reviewing the International Directory of Corporate Affiliations. We then aggregated these companies' EEO-1 reports and compared them to all companies filing EEO-1 reports and to selected foreign-owned companies filing EEO-1 reports. Our analysis follows.

Overall Employment Trends

As of 1989, foreign-owned companies operating in the United States that we have identified in our EEO-1 data base had approximately 530,000 employees, up from 350,000 employees in

1980. (See Tables 1A-1C.) Of this total, Japanese-owned companies had almost 72,000 employees in 1989, more than three times their employment in 1980. Generally speaking, the Japanese-owned companies have an above average number of employees. In fact, their size averaged approximately 1,800 employees, compared to the average of 1,000 employees for all employers in the 1989 EEO-1 data file. Non-Japanese foreign-owned companies, meanwhile, had more than 450,000 employees in 1989, for an increase of almost one and one-half times the 336,000 employees working in such companies in 1980.

Changes in Employment

Tables 1A through 1C present employment growth figures for 1980-1985 and 1985-1989. The first period was one of economic recession and recovery, whereas the second period was one of continued economic growth. These conditions are reflected in the entire EEO-1 data base. For the period 1980-1985, total EEO-1 employment declined by some 600,000 employees. On the other hand, about 4.9 million employees were added to the EEO-1 survey during 1985-1989. (Table 1A.) With the exception of American Indians and Alaskan Natives in the period 1980-1985, all minority groups increased their numbers during both periods, as did women.

Despite the recession that occurred early in the 1980-1985 period, both Japanese-owned companies and other foreign-owned companies increased their employment in the period. This increase extended to minorities and women. In Japanese-owned companies, more new jobs went to Asians or Pacific Islanders during the 1980s than to any other minority group. Women gained one-third of all new jobs in Japanese-owned companies during the 1980-1985 period, and 38 out of every 100 new jobs during the 1985-1989 period.

In other foreign-owned companies, minorities gained nearly half of all new jobs. Unlike Japanese-owned companies, most new jobs here went to blacks and Hispanics, particularly during the latter 1980s. Women, including minority women, gained about three-fourths of all new jobs added to other foreign-owned companies during 1980-1985. During 1985-1989, minorities gained approximately three of every 10 new jobs created in those companies, as did women.

Employment Participation of Minorities and Women

In 1989, minorities represented 22.2 percent of the work force in all companies surveyed by EEOC, 27.6 percent in Japanese-owned companies, and 25.1 percent in other foreign-owned companies. (See Table 2.) Asians or Pacific Islanders represented the largest absolute and relative number of

minorities in Japanese-owned companies, accounting for 12.9 percent of employment, compared to 3.4 percent in other foreign-owned companies, and 2.6 percent in all companies surveyed. The employment participation of blacks and Hispanics was lowest in Japanese-owned companies, 8.4 percent and 6.0 percent respectively. Other foreign-owned companies reported that their work forces were 12.4 percent black and 8.4 percent Hispanic. The total data base shows a work force that is 12.5 percent black and 6.5 percent Hispanic. The representation of women was lowest in Japanese-owned companies, 38.5 percent compared to 49.0 percent in other foreign-owned companies, and 46.2 percent in total companies.

With respect to officials and managers, the employment participation of Asians or Pacific Islanders was significantly higher in Japanese-owned companies during the 1980s. In 1989, for instance, it was 22.7 percent in such companies, compared to 2.1 percent in other foreign-owned companies and 1.8 percent in all companies.

The participation of blacks as officials and managers was lowest in Japanese-owned companies, 3.0 percent, compared to 6.0 percent in other foreign-owned companies, and 5.1 percent in all companies. Women officials and managers were under represented in Japanese-owned companies. Women were 15.9 percent of the officials and managers in Japanese companies compared to 32.3 percent in other foreign-owned companies, and 28.6 percent in all companies.

Average Annual Rate of Change in Employment

During the 1980's, every minority group, with the possible exception of American Indians or Alaskan Natives, experienced a larger average annual rate of growth in employment in non-Japanese foreign companies than in all EEO-1 companies. (See Table 3.) Thus, for example, Hispanics and Asians or Pacific Islanders increased their employment at the other foreign-owned companies by 8.5 percent and 11.3 percent respectively. For all companies, the rates were 7.0 percent and 8.6 percent. The average annual rate of employment change in Japanese-owned companies out paced those in other foreign-owned companies. During the 1985-1989 period, the employment of blacks at Japanese-owned companies increased by 19.5 percent a year, compared to 4.7 percent in other foreign-owned companies. The average annual rate of employment growth of women at Japanese-owned companies also out-paced both other foreign-owned companies and total EEO-1 companies. Over the 1985-1989 year period, the employment of women at Japanese-owned companies grew 18.4 percent a year, compared to 3.3 percent for other foreign companies and 4.1 percent for all companies covered by EEO-1.

Generally speaking, the average annual rate of managerial employment increased faster than the rate for all jobs. This was particularly true with regard to blacks and Hispanics at Japanese-owned companies during the period 1985-1989. During that period, employment of black and Hispanic managers at such companies increased at an annual rate of 33.5 percent and 22.2 percent respectively. Meanwhile, the employment growth of blacks and Hispanics in official and management positions at all companies increased at annual rates of 4 and 5.6 percent respectively. A similar situation held for women at Japanese-owned companies in the period 1985-1989. Women managers increased 27.5 percent a year, compared to the average annual increase of 18.4 percent for women in all jobs and six percent a year for women officials and managers. The average annual employment growth of black, Hispanic and women managers at Japanese-owned companies during 1985-1989 substantially out paced the comparable growth rates in other foreign-owned companies as well as in total EEO-1 companies.

Charges

The Commission earlier furnished you, Mr. Chairman, data on employment discrimination charges filed against Japanese-owned companies operating in the United States. This data covers charges filed during FY-90. This data describes the bases and issues raised in the approximately 115 charges filed against approximately 35 companies staff identified as Japanese-owned.

Charging parties frequently claim that they are discriminated against because of multiple bases, for example race, sex and national origin discrimination. Similarly, charging parties frequently raise many issues, for example, they were discriminated against in promotions, benefits and discipline. With this in mind, our review of FY-90 charges filed against Japanese companies showed:

- The largest number of charges filed against Japanese-owned companies -- approximately 37% -- raise the issue of race discrimination;
- The second largest group of charges -- 34% -- raise the issue of sex discrimination (presumably charges filed by women);
- The next largest group of charges -- approximately 29% -- allege discrimination on account of age.
- And finally, nearly 14% of the charges allege discrimination on account of national origin.

Let me now turn our attention to what types of issues are raised in the charges against Japanese-owned companies.

- Nearly half of the charging parties -- 47% allege that they were unfairly discharged or terminated;
- Approximately 16% of the charging parties allege they were discriminated against with regard to hiring;
- Another 16% of the charging parties stated their "terms and conditions of employment" were discriminatory. (Terms and conditions is a catch all phrase -- and some of the Charging Party's could be claiming discriminatory work assignments, vacation times, or some other "terms and conditions of employment".)
- Another 14% of the charging parties claimed they were being harassed.

What is the significance of this data? Let me begin by emphasizing that we are dealing with an extraordinarily small number of charges. As I stated previously, in FY-90 only 115 charges were filed against Japanese companies that we identified. By contrast, EEOC received 59,426 charges to investigate during FY-90. The number of charges filed against identified Japanese companies represents only .19% of EEOC's overall workload. We are therefore reluctant to draw conclusions from such an insignificant number.

However, as small and as meaningless as the sample is, it appears that charges filed against Japanese companies by and large follow a profile of charges filed against other employers. Generally, individuals filing charges against Japanese-owned companies raise the same bases and issues in comparable percentages to those charges filed against other employers.

EEOC Investigations and Lawsuits

The Committee has also requested "EEOC cases of alleged corporate discrimination, including Honda, Recruit and other examples of EEOC actions you may wish to describe".

Mr. Chairman first and foremost, EEOC is a law enforcement agency. When representatives of this agency have appeared befor our oversight Committee, your subcommittee, and other Congressional Committees, they have consistently declared that the EEOC's mission is to eliminate unlawful employment discrimination, "root and branch." To that end, when EEOC discovers employers, be they domestic or foreign, Japanese or French, who have unlawfully discriminated, the agency invokes th full measure of administrative and litigation enforcement power.

In recent years, EEOC has initiated Commissioner charges against a few Japanese-owned companies operating in the United States. Members of the public did not file these charges. Rather, staff developed information for EEOC Commissioners to charge these companies with a pattern and practice of systemic discrimination.

When EEOC filed charges against these companies, the agency applied the same criteria which it routinely utilizes to evaluate and select other large class action and systemic charges. The charges the agency filed against Japanese concerns involved large employers located throughout the United States. Both the Investigations Division, Office of Program Operations, in headquarters, and several field offices were involved in preparing materials on these companies, investigating and conciliating the charges.

The charges were settled after several years of investigation. In some instances, such as in the Honda case, companies agreed to publicize settlement of the Commissioner charge. In one instance, litigation was filed and the information is now public. But generally, most of the charges have been settled during conciliation and before the initiation of litigation. Thus, Title VII's confidentiality provisions are applicable to these charges and prohibit agency staff from describing the violations found at each particular company and the remedies obtained. In general terms, however, EEOC has found during its investigation of Japanese companies that the violations uncovered are similar to those discovered in domestic corporations.

EEOC in settling these charges has in one instance found only a few victims and settled for $50,000, while in another charge the agency uncovered multiple violations, a large class of victims, and secured approximately 6 million dollars in back pay. Relief has also included job offers to identified victims, as well as future job opportunities to the classes of victims. Typically, our conciliation agreements also provided for mechanisms for the companies to notify the female, minority, and older citizen communities of future hiring vacancies; notification of the employee work force of future job opportunities; changes to the hiring, assignment, and promotion systems in order to eliminate discrimination barriers; implementation or revision of complaint programs; incorporation of elaborate training programs for supervisors, managers, and personnel workers; and, extensive monitoring provisions for the Commission to assure compliance with the settlements.

Mr. Chairman, you have also requested information on EEOC lawsuits against Japanese companies. In this area, I can speak more freely because Title VII's confidentiality provisions are operative only when talking about EEOC enforcement prior to the

initiation of litigation. You specifically requested information on the Recruit case.

Our San Francisco field office conducted the investigation and litigation against the Recruit Corporation and its sister concern, Transworld Recruit/Interplace. Our staff learned that Recruit, an employment referral agency, might be discriminating on the basis of age, race, national origin and sex. We had heard that Interplace used a secret code in internal documents which indicated employer preferences for workers of particular ages, sex, race and national origin groups. San Francisco staff drafted two Commissioner charges accompanied by documentary and testimonial evidence establishing violations of Title VII and the Age Discrimination in Employment Act. The Vice Chairman of the agency signed the charges against the employment agencies in May 1989. After the charges had been served on Recruit and Interplace, EEOC staff learned that Interplace had begun to destroy possibly incriminating business records. We obtained a court order temporarily closing the company to prevent records from being altered and to allow us to secure the documents.

We filed suit based on the information we obtained and we are pleased to state that EEOC and Recruit have settled the lawsuit. The company has established a $100,000 fund to be distributed among the victims of its discrimination. This money will go to individuals who should have been referred to jobs but for Recruits unlawful action. Our agreement with Recruit also requires the company to hold two equal employment opportunity training seminars to be held in Japan. These seminars are to educate Japanese managers who are coming to the United States on the country's fair employment laws.

Throughout the 1980's, EEOC, working with the Department of State, has also been involved in a series of lawsuits interpreting a 1953 Treaty of Friendship, Commerce and Navigation (FCN Treaty) between the United States and Japan. EEOC filed amicus curiae briefs in support of the charging parties in Spiess v. C. Itoh & Co., Furtino et al v. Quasar Company, and Avagliano v. Sumitomo Shoji American, Inc. The last case, Sumitomo, was ultimately decided by the Supreme Court in favor of the position taken by EEOC and the charging parties.

In Sumitomo, a group of female employees charged the company with sex and national origin discrimination because it reserved all management positions for Japanese males. Sumitomo's defense was that the charging parties' Title VII lawsuit was barred because the FCN Treaty gave it immunity from Federal Fair Employment Laws because it was a Japanese company. EEOC opposed this position. We argued that although Sumitomo was Japanese-owned, the charged company had incorporated in the United States and therefore it stood in the same shoes as any other domestic corporation. The Supreme Court agreed with the agency's position

reasoning that when Sumitomo incorporated in the United States, seeking all the advantages American corporations have, it must also abide by our federal labor laws just as all other domestic corporations. The Commission also briefed this identical issue in the C. Itoh case.

More recently, EEOC filed an amicus brief in Fortino et. al. v. Quasar Co. This case is before the Seventh Circuit Court of Appeals. In Fortino, the plaintiffs allege they were laid off because of their national origin (American) and age. The district court ruled for the plaintiffs. On appeal, Quasar is arguing that the 1953 FCN Treaty allows it to treat its Japanese employees more favorably than American workers because it too is a Japanese concern. Quasar stresses it is not incorporated in the United States. EEOC's brief in the Seventh Circuit argues that Quasar can not shield itself from Title VII liability by invoking the FCN Treaty. Our position is that although Quasar is not incorporated in the U.S., it is a division of Matsushita Electric Corporation of America, which has incorporated in the United States and therefore Quasar must abide by U.S. Fair Employment Laws. We are arguing that the 1953 Treaty gives Quasar no special right to disregard our civil rights laws.

The Commission has also brought suits against Japan Airlines for violating the Age Discrimination in Employment Act in a layoff situation; against Panasonic Industrial for more harshly disciplining a female worker than a male; and against American Suzuki Motors because the defendant refused to hire women as warehouse workers because of their sex. The Commission and Suzuki settled the case for 45,000 dollars in back pay for eight women and eliminating the discriminatory practices.

A word of caution is in order here. It would be ill advised to make generalizations based on these few lawsuits. Last year, the Commission filed approximately 650 new law suits. This agency's litigation workload is extraordinarily heavy. At any one time, we are prosecuting about 900 active cases. We have already pointed out that charge filings against Japanese companies amount to just a fraction of our FY-90 Administrative workload. Moreover, we wish to note that the very nature of litigation is adversarial. EEOC found that Japanese defendants are no less and no more creative or aggressive than domestic companies when confronted by a Commission investigation or lawsuit. By and large, Japanese employers resemble the overall business community -- some are model employers and some require a great deal of attention.

Table 1A. Employment and Change in Employment of Minorities and Women in All Jobs in and Managerial Jobs in Total Companies, U.S. Summary, 1980, 1985 and 1989

Population Group	Employment			Change in Employment	
	1980	1985	1989	1980-1985	1985-1989
All Jobs					
Total, All Groups	37,182,550	36,573,826	41,448,545	-608,724	4,874,719
Minorities	6,961,661	7,309,852	9,136,938	348,191	1,827,086
Blacks	4,224,179	4,327,599	5,170,577	103,420	842,978
Hispanics	1,996,822	2,060,290	2,705,271	63,468	644,981
Asians or Pacific Islanders	560,332	775,353	1,080,732	215,021	305,379
American Indians	180,328	146,610	180,358	-33,718	33,748
Women	15,365,612	16,252,443	19,139,612	886,831	2,887,169
Officials and Managers					
Total, All Groups	4,181,430	4,501,173	4,929,833	319,743	428,660
Minorities	314,229	410,461	500,273	96,232	89,812
Blacks	165,085	215,143	250,819	50,058	35,676
Hispanics	93,077	115,656	143,444	22,579	27,788
Asians or Pacific Islanders	40,302	63,997	89,389	23,695	25,392
American Indians	15,765	15,665	16,621	-100	956
Women	803,293	1,113,724	1,408,734	310,431	293,010

Source: Employer Information Reports (EEO-1).

Table 1B. Employment and Change in Employment of Minorities and Women in All Jobs and in Managerial Jobs in Japanese-Owned Companies, U.S. Summary, 1980, 1985 and 1989

Population Group	Employment			Change in Employment	
	1980	1985	1989	1980-1985	1985-1989
All Jobs					
Total, All Groups	20,420	36,635	71,926	16,215	35,327
Minorities	7,196	11,472	19,871	4,276	8,399
Blacks	2,187	2,986	6,065	799	3,079
Hispanics	1,395	2,657	4,348	1,262	1,691
Asians or Pacific Islanders	3,563	5,713	9,302	2,150	3,589
American Indians	51	116	156	65	40
Women	8,587	14,117	27,697	5,530	13,580
Officials and Managers					
Total, All Groups	3,608	6,741	13,920	3,133	7,179
Minorities	1,454	2,178	3,963	724	1,785
Blacks	67	131	419	64	288
Hispanics	98	166	370	68	204
Asians or Pacific Islanders	1,284	1,871	3,154	587	1,283
American Indians	5	10	20	5	10
Women	369	836	2,208	467	1,372

Source: Employer Information Reports (EEO-1).

Table 1C. Employment and Change in Employment of Minorities and Women in All Jobs and in Managerial Jobs in Other Foreign-Owned Companies, U.S. Summary, 1980, 1985 and 1989

Population Group	Employment			Change in Employment	
	1980	1985	1989	1980-1985	1985-1989
All Jobs					
Totals, All Groups	336,179	364,246	453,080	28,067	88,834
Minorities	73,088	86,899	113,592	13,811	26,693
Blacks	41,867	48,559	58,719	6,692	10,160
Hispanics	23,293	27,633	38,268	4,340	10,635
Asians or Pacific Islanders	7,007	9,916	15,225	2,909	5,309
American Indians	921	791	1,380	-130	589
Women	174,318	195,530	222,170	21,212	26,640
Officials and Managers					
Total, All Groups	43,226	48,145	60,500	4,919	12,355
Minorities	4,012	4,949	7,096	937	2,147
Blacks	2,023	2,473	3,600	450	1,127
Hispanics	1,297	1,525	2,098	228	573
Asians or Pacific Islanders	606	845	1,243	239	398
American Indians	86	106	155	20	49
Women	12,960	16,600	19,531	3,640	2,931

Source: Employer Information Reports (EEO-1).

Table 2. Employment Participation of Minorities and Women in All Jobs and in Managerial Jobs in Total Companies, Japanese-Owned Companies and in Other Foreign-Owned Companies U.S. Summary, 1980, 1985 and 1989

Population Group	Total Companies			Japanese-Owned Companies			Other Foreign-Owned Companies		
	1980	1985	1989	1980	1985	1989	1980	1985	1989
All Jobs									
Minorities	18.7	20.0	22.2	35.2	31.3	27.6	21.7	23.9	25.1
Blacks	11.4	11.8	12.5	10.7	8.2	8.4	12.5	13.3	12.4
Hispanics	5.4	5.6	6.5	6.8	7.3	6.0	6.9	7.6	8.4
Asians or Pacific Islanders	1.5	2.1	2.6	17.4	15.6	12.9	2.1	2.7	3.4
American Indians	0.5	0.4	0.4	0.2	0.3	0.2	0.3	0.2	0.3
Women	41.3	44.4	46.2	42.1	38.5	38.5	51.9	53.7	49.0
Officials and Managers									
Minorities	7.5	9.1	10.1	40.3	32.3	28.5	9.3	10.3	11.7
Blacks	3.9	4.8	5.1	1.9	1.9	3.0	4.7	5.1	6.0
Hispanics	2.2	2.6	2.9	2.7	2.5	2.7	3.0	3.2	3.5
Asians or Pacific Islanders	1.0	1.4	1.8	35.6	27.8	22.7	1.4	1.8	2.1
American Indians	0.4	0.3	0.3	0.1	0.1	0.1	0.2	0.2	0.3
Women	19.2	24.7	28.6	10.2	12.4	15.9	30.0	34.5	32.3

Source: Employer Information Reports (EEO-1).

Table 3. Average Annual Rate of Change in Employment of Minorities and Women in All Jobs and in Managerial Jobs in Total Companies, Japanese-Owned Companies and in Other Foreign-Owned Companies, U.S. Summary, 1980, 1985 and 1989

Population Group	Total Companies		Japanese-Owned Companies		Other Foreign-Owned Companies	
	1980-1985	1985-1989	1980-1985	1985-1989	1980-1985	1985-1989
All Jobs						
Total, All Groups	-0.2	3.2	12.4	18.4	2.1	5.6
Minorities	1.0	5.6	9.7	14.7	3.5	6.8
Blacks	0.5	4.5	6.4	19.5	3.0	4.7
Hispanics	0.6	7.0	13.8	13.1	3.4	8.5
Asians or Pacific Islanders	6.6	8.6	9.9	12.9	7.2	11.3
American Indians	-4.2	5.3	17.9	7.7	-3.3	15.0
Women	1.1	4.1	10.4	18.4	1.9	3.3
Officials and Managers						
Total, All Groups	1.5	2.3	13.2	19.8	2.2	5.8
Minorities	5.5	5.0	8.3	16.0	4.3	9.4
Blacks	5.4	4.0	14.4	33.5	4.1	9.9
Hispanics	4.4	5.6	11.1	22.2	3.3	8.3
Asians or Pacific Islanders	9.6	8.7	7.7	13.9	6.8	10.2
American Indians	-0.1	1.5	14.9	19.0	4.3	10.0
Women	6.6	6.0	17.8	27.5	5.1	4.1

Source: Employer Information Reports (EEO-1).

Mr. LANTOS. Well, I will have a number of questions of you, but I would like to move on to Mr. Biermann.

Let me just say that I have tremendous admiration for the role you played in the Americans with Disabilities Act. You were a very important part of passing legislation that I think will change the whole atmosphere of this society for generations to come. I want to salute you and applaud you for that.

I would hope that you would be equally vigorous in going after age discrimination cases and sex discrimination cases and national origin discrimination cases. That is what our anguish is here. Here we are dealing with some of the largest corporations in the world pitted against a handful of really poor, unemployed individuals, and they are told to fight giant corporations instead of EEOC getting into the act and giving them a hand.

We had enormously moving testimony this morning from five outstanding individuals who, under oath, outlined a chamber of horrors of discrimination by powerful Japanese companies against American citizens; whites and blacks and women and others, the Mexican-Americans. I don't see anywhere near the degree of vigor and commitment on the part of EEOC.

Mr. KEMP. You know, I think we are an underfunded agency, but I'm sure everybody says they are underfunded. I would like to invite you to come down with the rest of the committee and see what we do at EEOC. We're responsible for more than 100,000 charges a year.

There was a recent study that showed that less than 2 percent of the people who feel they were discriminated against filed charges with EEOC or with State fair employment practice agencies.

I mean, I think that there is runaway discrimination in this country, and not just limited to Japanese companies, it involves all. And I think it needs the support of this Congress.

Mr. LANTOS. Well, it doesn't involve all. There are some corporations which have an exemplary record, and we now find—I mean, the evidence which is coming forward in today's hearing is absolutely sickening. It is revolting. It is in print telling people, "Don't send us categories of people who are white or black or women or of a certain age."

These companies are guests in our country, and they should live up to the laws of this country. And there needs to be some outrage on the part of this administration.

Mr. KEMP. Well, I think that we were the ones that brought the first case, last October, against Personnel Pool. They were doing the same coding, very elaborate coding.

And there are 20,000 temporary employment agencies in this country; it is the third fastest growing industry in this country, and we've been told that employers make that request of them, and if they don't do it, they'll go to another employment agency.

We've got to send the message out that you can't, you know, stockpile your employees through this discriminatory method.

Mr. LANTOS. Mr. Biermann.

STATEMENT OF LEONARD J. BIERMANN, DEPUTY DIRECTOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. BIERMANN. Thank you, Mr. Chairman.

Distinguished chairman, members of the subcommittee, ladies and gentlemen, I am Leonard Biermann, the Deputy Director of the Office of Federal Contract Compliance Programs [OFCCP], and the Employment Standards Administration of the U.S. Department of Labor.

Mr. Chairman, I am here today representing our Director, Cari Dominguez, who had a prior commitment before she received your letter on July 10. She asked me to express her sincere regrets to you and to all the members of the committee, that she could not be with you here today.

Since 1965, when Executive Order 11246 was signed, the OFCCP has been responsible for making sure that all companies doing business with the Federal Government provide equal employment opportunity without regard to race, sex, color, religion, national origin, disability, Vietnam era or disabled veteran status.

Our office also requires contractors to take affirmative action by making good faith efforts to recruit qualified workers from all segments of the work force and to provide training and advancement opportunities for all employees. These mandates are enforced by the conduct of onsite compliance reviews of a portion of the approximately 250,000 contractor establishments and construction sites that are subject to the Executive order and other laws which we enforce.

About 6,000 such reviews are conducted annually. Where substantive violations of our authority are found, resolution is usually obtained through conciliation agreements, a document which binds the contractor to fully correct the problem. Less substantive issues are resolved through letters of commitment, similar documents, but less formal.

Ultimately, contractors who do not comply may be debarred from Federal work, and their current contracts may be canceled.

Given the size of our contractor universe, careful selection of employers is imperative. Our system for selecting supply and service contractors is known as the Equal Employment Data System or EEDS. The EEDS is based on the employer information reports or EEO–1 forms, as the chairman spoke about, submitted annually to the joint reporting committee, a cooperative effort between our agency and the Equal Employment Opportunity Commission.

The EEO–1 reports provide race, sex, and national origin data on the incumbent employees of most employers, shown by broad categories of occupational groups. The selection of a contractor for a compliance review is done objectively, not arbitrarily, and based on neutral standards.

Contractors are selected based on their individual use of minorities and women, compared with their peers in a similar industry and geographical area.

Relative use of minorities and women does not seem to be significantly influenced by corporate ownership being foreign or domes-

tic. To comply with constitutional prohibitions against unreasonable search and seizure, the courts have required OFCCP to assure that selection of contractors for review be based on a neutral system such as that which I have just described.

In your invitation to testify, you requested that we address certain specific matters concerning implementation of the OFCCP programs. I will now endeavor to address those issues.

One question asked the proportion of our compliance reviews which are conducted at foreign-owned businesses. I have noted in explaining our contractor selection system for scheduling compliance reviews that selection is made from a computer-generated system using the EEO–1 report as the data base.

Foreign ownership is not a factor in determining these selections and has no bearing on coverage under the Executive order or related laws. During the course of a compliance review, we would not seek to determine ownership of the Federal contractor, but only if the contractor is covered by any of the laws authorizing review by our agency.

There are many foreign-owned businesses in the United States. By name alone, it is not possible to determine whether the ownership is British, Canadian, Dutch, French, German, Italian, Japanese, or of any other country.

You asked about the usefulness of OFCCP collecting more data on corporate ownership. Insofar as the mandate of our agency is concerned, we do not believe that having more data on corporate ownership would make any significant difference in our insuring that Federal contractors comply with their equal employment opportunity and affirmative action obligations.

In your letter to Director Dominguez, you wanted a response from our San Francisco regional office with regard to the snapshot survey taken earlier this year in region 9 which showed a higher proportion of lack of compliance on the part of Japanese-owned companies in the United States.

With your permission, I should now like to address that with you.

For the record, our San Francisco regional office has undertaken no survey of Japanese-owned companies. In an effort to accommodate a request from a reporter from the New York Times, we provided only information that could be made public under the Freedom of Information and Privacy Acts. These data regarded the results of recent compliance reviews of several Japanese-owned businesses that, by the way, were identified as Japanese only because of their names. Some of these companies referred to by the New York Times include Fujitsu, Hitachi, Ricoh, Matsushita, Mitsubishi, Yamaha, and other various wholly owned subsidiaries and operating divisions.

There could well be an equal number of Japanese-owned companies that have American names. Added to this would be scores of other businesses with foreign ownership from other countries in Europe, Asia, and this hemisphere. However, the reviews conducted in the San Francisco region of the obviously Japanese-owned companies, like their counterparts nationally, indicated that their utilization of minorities and women and other findings in the

review were comparable to those of the other 6,000 compliance reviews that we do annually.

Last year, of 6,033 completed compliance reviews, 4,684, or 78 percent, resulted in violations. During fiscal year 1990, we executed 2,923 conciliation agreements. Again to remind you, those are the agreements that we enter into when there are substantive violations.

[The prepared statement of Mr. Biermann follows:]

Testimony of

Leonard J. Biermann

Deputy Director

Office of Federal Contract Compliance Programs

Employment Standards Administration

U.S. Department of Labor

before the

Subcommittee On Employment and Housing

of the

Committee On Government Operations

U.S. House of Representatives

Tuesday, July 23, 1991 9:30 a.m.

Room 2247 - Rayburn House Office Building

Distinguished Chairman, Members of the Subcommittee, Ladies and Gentlemen, I am Leonard J. Biermann, Deputy Director of the Office of Federal Contract Compliance Programs (OFCCP) in the Employment Standards Administration of the U.S. Department of Labor.

Mr. Chairman, I am here today representing our Director, Cari M. Dominguez, who had a prior commitment before she received your letter of July 10. She asked me to express her sincere regrets to you and all of the members of the Subcommittee.

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Our office also requires contractors to take affirmative action by making good faith efforts to recruit qualified workers from all segments of the workforce, and to provide training and advancement opportunities for all employees.

These mandates are enforced by the conduct of on-site compliance reviews of a portion of the approximately 250,000 contractor establishments and construction sites that are subject to the Executive Order and other laws. About 6,000 such reviews

are conducted annually. Where substantive violations of our authorities are found, resolution is usually obtained through Conciliation Agreements, a document which binds the contractor to fully correct the problem. Less substantive issues are resolved through Letters of Commitment, similar documents, but less formal. Ultimately, contractors who do not comply may be debarred from Federal work and their current contracts may be cancelled.

Given the size of our contractor universe, careful selection of employers is imperative. Our system for selecting supply and service contractors is known as the Equal Employment Data Systems, or EEDS. The EEDS is based on the Employer Information Reports, or EEO-1 forms, submitted annually to the Joint Reporting Committee, a cooperative effort between our agency and the Equal Employment Opportunity Commission.

The EEO-1 reports provide race, sex and national origin data on the incumbent employees of most employers, shown by broad categories of occupational groups. The selection of a contractor for a compliance review is done objectively, non-arbitrarily and based on neutral standards. Contractors are selected based on their individual use of minorities and women compared with their peers in a similar industry and geographical area. Relative use of minorities and women does not seem to be significantly influenced by corporate ownership being foreign or domestic.

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You asked about the usefulness of OFCCP collecting more data on corporate ownership.

Insofar as the mandate of our agency is concerned, we do not believe that having more data on corporate ownership would make any significant difference in our ensuring that federal contractors comply with their equal employment opportunity and affirmative action obligations.

In your letter to Director Dominguez, you wanted a response from our San Francisco Regional Office with regard to "the 'snap shot' survey taken earlier this year in Region IX which showed a high proportion of lack of compliance on the part of Japanese-owned companies in the U.S." With your permission, I should like to discuss this with you now.

For the record, our San Francisco Regional office has undertaken no survey of Japanese-owned companies. In an effort to accommodate a request from a reporter with *The New York Times*, we provided only information that could be made public under the Freedom of Information and Privacy Act. These data regarded the results of recent compliance reviews of several Japanese-owned businesses, that, by the way, were identified as Japanese only because of their names.

Some of these companies referred to by *The New York Times* include Fujitsu, Hitachi, Ricoh, Matsushita, Mitsubishi, Yamaha and their various wholly-owned subsidiaries and operating divisions. There could well be an equal number of Japanese-owned companies that have American names. Added to this would be scores of other businesses with foreign ownership from other countries in Europe, Asia and this hemisphere.

However, the reviews conducted in the San Francisco Region of the obviously Japanese-owned companies, like their counterparts nationally, indicated that their utilization of minorities and women and other findings in the reviews were comparable with those of the other 6,000 compliance reviews we do annually.

Last year, of 6,033 completed compliance reviews, 4,684 (or 78 percent) resulted in violations. During Fiscal Year 1990, we executed 2,923 Conciliation Agreements.

Additionally, 1,761 Letters of Commitment were used to correct minor deficiencies. Often contractors must compensate victims of past or present discrimination with cash payments in the form of back pay, salary adjustments or financial obligations for accommodations. Our office obtained $34.7 million last year for individuals who had been discriminated against.

By the way, Conciliation Agreements have increased by more than 250 percent during the past 10 years, from 1,121 in 1981 to 2,923 in 1990, and Letters of Commitment have increased as well from 1,162 to 1,761 during the same period.

To summarize, Mr. Chairman, the OFCCP expects to continue an average of 6,000 compliance reviews each year of Federal contractors through an objective, non-arbitrary and neutral selection system. To the extent that any routine compliance reviews would identify significant disparities in the employment and promotion of minorities and women in foreign-owned companies as compared to those companies that are not, then this would be reflected in our system and those companies would be selected for review. Our reviews will continue to focus on the contractor's equal employment opportunity and affirmative action obligations which are required regardless of ownership.

That concludes my formal remarks. Mr. Chairman, I would be pleased to respond to any questions you or other members of the subcommittee may have.

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Mr. LANTOS. Let me be sure I understand you, Mr. Biermann. Is it your testimony that more than three of four companies you look at are guilty of violations?

Mr. BIERMANN. Yes, Mr. Chairman. That's correct. Now the violations can be affirmative action plan violations where the development of the plan is not pursuant to the Labor Department regulations, such as the creation of a work force analysis, job groups, utilization analysis, and establishment of——

Mr. LANTOS. Whatever it is, the fact is that more than three-quarters of the companies, you are testifying under oath, are guilty of violations of American law in this field. Isn't that what you're testifying?

Mr. BIERMANN. That is correct. They have been found to be violating the Executive order and the regulations promulgated by the Department of Labor.

Mr. LANTOS. Twenty-two percent obey and 78 percent are scofflaws; is that what you're saying?

Mr. BIERMANN. That's correct. I think it important, though, to note that there was 2,923 conciliation agreements out of the 6,000 compliance reviews. The letters of commitment that are entered into, where a violation may be found, are quite often very minor. So it is not as though they are violating the principles of Title VII of the Civil Rights Act, but rather are not preparing an affirmative action plan in the method espoused by the regulations.

Mr. MARTINEZ. Mr. Chairman.

Mr. LANTOS. Please.

Mr. MARTINEZ. On that point, you have the ability to debar these people from their contracts whether they are in compliance with the affirmative action and if they've ignored becoming in compliance with the affirmative action plan itself or even making it out and presenting it, but more than that, if they have not made substantial affirmative action progress.

In the last, let's say, 5 years, how many have been debarred?

Mr. BIERMANN. Well, very few.

Mr. MARTINEZ. Have any been debarred? Let me ask you that question.

Mr. BIERMANN. In the last 5 years, there might have been one or two.

Mr. MARTINEZ. There might have been one or two?

Mr. BIERMANN. The 5 year period, I'm not exactly sure on, but there may have been one or two. In the entire 25, now 26-year history of the Executive order program, there have been less than 25. But I should like to explain that, if I might.

Mr. MARTINEZ. Less than 25. What percentage of the violation does that constitute?

Mr. BIERMANN. Well, if we find 4,000 violations a year, obviously what we are doing is negotiating settlements with the contractors rather than debarring them. The Executive order itself requires that prior to any debarment, the Department of Labor enter into negotiations with that contractor to try to effect a reasonable accommodation through the use of a conciliation agreement to correct the violations found. Should that not be possible, it is then appropriate to hold hearings for the purpose of debarment.

Mr. MARTINEZ. Of the 22 percent that are in compliance, are those the ones that you negotiated with?

Mr. BIERMANN. No. The 22 percent that are in compliance are those that required no settlement agreement at all because what they are doing is consistent with the requirements of the regulations.

Mr. MARTINEZ. So what you're talking about is that you're working with 78 percent of those contractors.

Mr. BIERMANN. That's correct.

Mr. MARTINEZ. I would suggest that if you debar one or two of them, the rest will real quick get in line.

Mr. LANTOS. Well, my colleague, Congressman Martinez, just gave the suggestion I was going to give. Your workload could be dramatically eased, dramatically eased, if you were not such a pussycat.

You don't debar anybody. Since you don't debar anybody, there is nobody concerned about being debarred. Therefore, they continue violating the law. One doesn't have to be a rocket scientist to draw the right conclusions here.

Mr. BIERMANN. Well, I suppose from your perspective it may be frustrating.

Mr. LANTOS. No, it's not frustrating. I think it's preposterous.

Mr. BIERMANN. Well, the issue is, however, that prior to debarring a contractor, they must have their opportunity for their day in court. That's required by the law. We hold many debarment hearings. We refer many cases to the solicitor suggesting that we hold hearings for purposes of debarment. The solicitor has vigorously pursued those.

The facts are, however, that when those hearings are scheduled, and sometimes during the course of the trial itself, the contractor capitulates. The contractor makes victims whole, commits themselves to appropriate affirmative action, does what is needed to comply with the Executive order program. Under our regulations, the contractor has the right to enter into that kind of an agreement prior to being debarred.

So debarment has really become a stick that does not have to be used, not that we don't want to use it or not that we are afraid to use it, but it doesn't have to be used because the fact of being debarred for most companies is so Draconian that no company, realizing that the Government means business and they may be debarred if they don't appropriately remedy the findings, will refuse to remedy the findings. That has consistently been our history, not just in recent years but all the way back to the beginning of the program in 1965.

Mr. LANTOS. Does the company which is found guilty of violation compensate the Government for its expenses?

Mr. BIERMANN. No. There may be some legal prohibitions to that, Mr. Chairman, but the company found guilty of violations certainly has to compensate the victims of those violations. We consistently obtain backpay. We consistently get priority accommodation to vacancies. Companies have paid significantly for having violated the Executive order.

Mr. LANTOS. How about the repeat violators? Do they get the same treatment?

Mr. BIERMANN. Well, we have a provision that when a company enters into a conciliation agreement and violates that agreement, we will not conciliate. We will immediately issue a 15-day notice advising the employer that we will seek debarment unless they can show good cause within 15 days, that good cause being convincing us that they didn't violate the agreement in the first instance.

Mr. MARTINEZ. Mr. Chairman, excuse me. You've taken them through the process that you say they are entitled to because this is a Draconian move. Well, I suggest that it depends on your outlook who it's more Draconian to: Those employees and those hundreds of employees who have been discriminated against and denied employment or employment mobility or the employer who is going to lose a few dollars in the contract. Mental attitude is all it is. It's evident to me from what you just said that you feel that it's more Draconian to do that to a company than it is to protect those employees.

Mr. BIERMANN. No, no.

Mr. MARTINEZ. That being the case, I would suggest that you move through the process and give them their day in court. Now they have violated that. You warn them again. I would think that upon the second violation for noncompliance, there would be immediate debarment. It's just like a man on probation. If he violates probation, he goes back to jail.

Mr. BIERMANN. Well, let me just give you some figures to that, sir. In 1990, we were able to obtain $34.7 million in financial settlements for victims of discrimination from those employers. The previous year we obtained $36.8 million.

Mr. MARTINEZ. Excuse me. Give me the total money that those people made. If we're going to talk about $34.7 million you recovered in penalties, let's talk about how much money did that total number of companies make in a given period of years. Do we know that?

Mr. BIERMANN. Well, no.

Mr. MARTINEZ. I would suggest that the $34.7 million probably is a drop in the bucket compared to what they actually made on the contracts. Losing that money that they made on the contracts I think would be a lot heavier penalty than just paying the $34.7 million.

Mr. BIERMANN. Congressman Martinez, I agree with you. The problem is, however, that where the company is willing to negotiate a settlement, we are obligated to enter into that negotiation with the company. We don't have punitive debarment as a tool available to us under the Executive order.

In other words, it is only the company who refuses to accommodate the remedies that we seek that is subject to debarment. That is inherent in the Executive order program and inherent in court cases which have since been ruled upon that apply to that program.

Mr. MARTINEZ. Let's see if I understand this right. What you're saying is that you can continue to take them to the process of debarment. They can continue to say we're going to comply and not comply. You then have to take them back again and take them back again, and they don't ever really have to comply.

Mr. BIERMANN. No, I didn't say that.

Mr. MARTINEZ. At some point in time they've got to be debarred. What you suggested is that you can't debar them.

Mr. BIERMANN. Well, there are two issues here. One is the victims of discrimination. If the company makes those victims whole, they are in compliance with the Executive order.

The other issue is failure to develop and carry out an adequate affirmative action plan. When they fail to do that, we enter into a conciliation agreement with that firm where they commit themselves in the following year to do certain things, very specific. If they fail to do that, then we are able to seek debarment of the company for failure to carry out the affirmative action plan and issue a 15-day notice.

Mr. MARTINEZ. So then you can debar them?

Mr. BIERMANN. Most of the issues involving affirmative action plans don't fall under the category of that kind of serious violation. Most companies, when they enter into a conciliation agreement and commit themselves to doing certain things, do those things. We don't have evidence that companies enter into agreements to do affirmative action outreach programs and then blatantly fail to do those things.

Mr. MARTINEZ. Thank you.

Mr. BIERMANN. It is a cost issue regarding discrimination findings, I think, that is the issue where contractors sometimes have difficulty settling.

Mr. LANTOS. Congressman Shays.

Mr. SHAYS. Mr. Chairman, I have no questions.

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

First, I'd like to say to the folks from the EEOC—and I know that the Chairman just stepped out for a minute—that I fully understand that you have a limited budget, not enough support staff to help you give the full attention that I know you would like to give to each and every one of those complaints which are filed with your office. I know that you're trying to do a good job under very difficult circumstances. I'm certainly sympathetic, as I know that the members of this committee are.

I'd like to ask you some broad questions. Anyone who wishes to answer on the panel would be fine. Do you believe that Japanese-owned companies here in the United States discriminate against workers more so than American-owned companies? Perhaps your answer might be that you don't know based on the data presented to you.

But what would you say on the charges of discrimination which have been filed by employees that come before you? Would you say that there's more of a pattern of discrimination in Japanese-owned companies than is apparent in other, American companies?

Mr. TROY. Congresswoman, the only pattern that we can see from the data, either the EEO–1 data or the charge data, is that the Japanese-owned companies tend to employ more Asian or Pacific Islanders in management-type positions. If you look at the representation in other areas, while they are not as great, they are relatively close. But in management positions, that's where you have your greatest disparity.

As far as the charges go, there's not a measurable difference in the kinds of cases that we get, except we get more hiring cases in Japanese-owned companies. In other words, 51 percent of the cases against Japanese-owned companies may be hiring cases, where maybe 49 or 48 percent other places.

In national origin cases, it's 14 percent as opposed to 11 percent in all other companies. So it is not a——

Ms. ROS-LEHTINEN. What was that last one?

Mr. TROY. National origin. You would normally expect most cases to be filed against Japanese-owned companies to be national origin cases.

Ms. ROS-LEHTINEN. Meaning Americans who believe that they were not hired because they were not of the right nationality?

Mr. TROY. They were not of the right nationality. We found that 14 percent of the cases filed against the Japanese-owned companies are national origin cases, but so are 11.9 percent of the cases filed against other American companies. So it's not too much of a difference as we see in the charges. The major difference, as I said, is the representation in management jobs. Where the other companies would have 2 to 3 percent Asian-Americans, the Japanese-owned companies would have 25 to 30 percent.

Ms. ROS-LEHTINEN. Now would you say then that the majority of the complaints or the charges of discrimination which are filed by employees have to do with the fact that they were not hired or that they were not promoted or that—when you say 51 percent——

Mr. TROY. I think I misspoke. The majority of cases fall—in this whole area, against all companies—fall on the basis of discharge or termination. Where you may find 51 percent of those charges filed against Japanese-owned companies, you would find 48 or 47 percent of those cases filed against all other companies. Discharge is the largest issue, not hiring. I made a mistake there.

Ms. ROS-LEHTINEN. So folks who have been terminated, and they believe that they have been terminated because of discrimination and quite possibly national origin discrimination, is the majority of the cases filed?

Mr. TROY. In the Japanese cases——

Ms. ROS-LEHTINEN. With Japanese cases, Japanese companies. The majority of the charges of discrimination filed by employees against Japanese-owned companies deal with——

Mr. TROY. Termination. As I said, 14 percent of those are based on the national origin. The others are based on race, religion and other factors just like other American companies.

Ms. ROS-LEHTINEN. Out of those factors, is the majority because of sex discrimination?

Mr. TROY. Race. Race is the largest thing.

Ms. ROS-LEHTINEN. Race.

Mr. TROY. Race is the largest factor in all cases.

Ms. ROS-LEHTINEN. When you say race, does that mean—what is the classification used? Hispanic is a race. White/black? Ethnic or race? What does race mean in this circumstance?

Mr. TROY. I guess different things to different people. The reason I smiled, we never get into what a person is when they bring a charge.

The individual who brings a charge states to us that "I was discriminated against because I'm black" or "I was discriminated against because I'm white" or "I'm discriminated against because I'm of a different color. I want to file my charge based on race because the individual who did it to me or the individual who had responsibility for the act is of a different race than myself." We don't get involved in determining who is what.

The races are black, white. Those are the two main ones that we see.

Ms. ROS-LEHTINEN. OK. So the majority of the employee-filed charges of discrimination against Japanese-owned companies deal with the termination of that employee and is based on race?

Mr. TROY. On page 7 of the Chairman's testimony, his testimony for the record—I believe it's page 7—we talk about these charges. Nearly half of the charging parties, 47 percent allege they were unfairly discharged or terminated. Approximately 16 percent of the charges allege they were discriminated against with regard to hiring. Another 16 percent of the charging parties stated their terms and conditions of employment were discriminatory. Another 14 percent of the charging parties claim they were harassed.

Now if you compare those with the same issues in the rest of the companies in the United States, the percentages are not vastly different, is what I was trying to say.

Ms. ROS-LEHTINEN. OK. As we heard this morning from some former employees of Japanese-owned companies, many of whom were women, there were distinct charges made by them about discrimination against women by Japanese-owned companies.

This listing here that has to do with discrimination against hiring, unfairly discharged, they are not broken down by charges against sex discrimination. In that aspect of it, sex discrimination against Japanese companies, would you say that you have more, less, or the same amount of employee charges against Japanese companies?

Mr. TROY. I would have to go back and look, Congresswoman, but I would believe that the percentages are about the same. About 20 percent of all charges we get are filed on the basis of sex, normally by female employees or applicants for employment. I dare say I haven't seen anything that lets me believe that of the 39 Japanese-owned companies that we studied, that they would have a higher percentage in that regard. But I could go back and get the right figures and send them to you.

Ms. ROS-LEHTINEN. OK, thank you. Would you say that your rate of settlement with Japanese-owned companies is higher, lower, or about the same as American-owned companies? Are you more willing to settle with a Japanese-owned company, or does statistics show that it has no bearing?

Mr. TROY. They are about the same. Keep in mind that we haven't done breakouts of ownership. None of our statistics are based on nationality of ownership.

Mr. LANTOS. Would my colleague yield?

Ms. ROS-LEHTINEN. Yes, Mr. Chairman.

Mr. LANTOS. I find fundamental logic in knowing which companies are owned by Japanese.

Now, how can you state both of these things? When you did your survey, which I find an appallingly unscientific survey, you looked at companies which are palpably Japanese names, like Toyota. You know that's a Japanese company. When you have a company called Goodyear, which may be 100 percent Japanese owned, it is not viewed by you as a Japanese company.

Since you don't ask what companies are owned by foreign nationals, you have no basis for making any of the statements any of you have made on this issue, that there is no material difference. Well, how do you know if you don't know what companies are owned by foreigners?

Mr. BIERMANN. Mr. Chairman, I think you made a good point.

Mr. LANTOS. Thank you.

Mr. BIERMANN. That is that——

Mr. LANTOS. I'd like you guys to make some good points for a change.

Mr. BIERMANN. Well, I certainly didn't want to infer that we had a statistically scientific sampling of Japanese firms operating in the United States.

Mr. LANTOS. I don't think you have any sampling. You just looked at companies with Japanese names, and you haven't looked at companies with non-Japanese names. Yet, you are telling us you don't think that there is any significant difference. But if you have no basis for identifying companies which are Japanese owned, how can you make a statement about practices of Japanese-owned companies?

Mr. TROY. Congressman Lantos, my statement was based on the information that we did develop. We don't do this as a normal everyday EEOC responsibility. We only responded to your request. When you gave us the request, we tried to find for ourselves in our documentation which companies were Japanese-owned. We had no mechanism for doing that except for names.

After we came and talked to you and your staff, you pointed out some companies to us that did not have Japanese names. We went back. We found 11 more. But we don't have that kind of base. So our statements, what we did was we found the 39 companies that we knew to be Japanese. We found 39 companies that would send us the EEO–1's that were of a certain size.

We took those companies as a sample. Then we took those same companies and compared their EEO–1 data to the data we had on charges brought by people against those companies only. In our statements, we are not making any conclusions as it relates to this. That's what I think the Chairman has said, and that's what I've tried to support.

Ms. ROS-LEHTINEN. Mr. Chairman, if I may, I think that that is an excellent point because what we're asking the EEOC to do, they are in charge of investigating charges of discrimination, make certain the determinations, either settled, et cetera.

Yet, we are asking them to make certain conclusions about discrimination, patterns of discriminations about certain companies, whether they are foreign owned or American owned. We are asking them to extrapolate from that data and make certain conclusions.

I think that that's different from, for example, the hearing we had last week where GAO combs what data some of us do not believe that the conclusions that they drew from that data supports it. Yet that's what they were doing. That's what they are in charge of doing.

I think this time we're doing it backward. We're asking this Commission to give us some conclusions which it is not part of their responsibility to conclude whether, in fact, Japanese-owned companies discriminate more or less.

They have a complaint before them. They are to investigate whether that complaint is valid. They are to make determinations on that complaint. I don't think that they are here to serve as a GAO study to conclude whether there's an insidious pattern of discrimination in certain——

Mr. LANTOS. If my colleague will yield, what prevents the EEOC from having companies check on your form, on the EEO–1 form, whether the company is foreign owned or not?

Mr. KEMP. Well, we'd have to, you know, revise our forms.

Mr. LANTOS. Well, you'd have to put another square there. I understand that. They would have to say yes or no. Then you would have the data.

Mr. KEMP. This is the first request we've had in 26 years. I mean, there are a lot of other requests—we are considering redoing the forms right now. I think our form allows companies to place people in professional and upper level jobs who really don't belong there. We show that women and minorities make up 28.3 percent of management, although, studies show that women and minorities are from 3 to 5 percent of management. I think there is some cleaning up that we can do on the forms.

Mr. LANTOS. Well, you see, it seems to me that the two panels we have had this morning are not communicating. We had five American citizens under oath testifying that they are discriminated against. On the basis of their experience, we can assume that others are discriminated against by Japanese-owned companies.

Now comes the EEOC which tells us we don't know which companies are Japanese owned, so we really can't tell you what happens there. Well, if that is true, then you better move and clean up your act so when you appear next time before this subcommittee, you will have the data which will enable you to give acceptable answers to very simple questions.

This subcommittee wants to know: Is there any pattern of discrimination on the part of Japanese-owned companies against American citizens?

Mr. KEMP. Sir, if we were working together, it does seem to me that this is probably available in the Federal Government. The Commerce Department probably has a list of Japanese concerns. Why couldn't you request that? Remember, our EEO–1 forms only cover corporations or employers that have 100 or more employees.

Mr. LANTOS. We did request that, by the way.

Mr. KEMP. Then you could have shared it with us and we could have gotten it. I mean, we went into this——

Mr. LANTOS. We haven't received it; we requested it. We share everything we have with you.

Mr. KEMP. Well, I think this is asking us to do something that we're not used to doing. It's the first request that we've had in 26 years. I think that if we were working together jointly, you and I, to try to do away with discrimination, your supplying us with that list would help us. We'll be glad to do it.

Remember that only 6 percent of employers in this country file EEO–1 forms because you have to have 100 or more employees. Remember, the fastest growing creator of jobs in this country are with employers that have 50 or less employees.

Mr. LANTOS. I know.

Mr. KEMP. They are creating 80 percent of the new jobs.

Mr. LANTOS. Mr. Chairman, the problem I have is that the administration is not cooperating in terms of its own various agencies. There is nothing to prevent you from sitting down with Mosbacher and dealing with Commerce. You can tell him you have a problem. His agency can help you, how you can work together.

I don't think it is the function of a congressional subcommittee to bring together the disparate agencies of the Federal Government so they will cooperate. It is your job. It is the Department of Immigration's job. It's Commerce's job to get together so you can do the job for the American people. It is not our job to manage the Federal Government, micro or macro. It is your job to get together with other Federal agencies.

Mr. KEMP. But I think that my testimony illustrates that we're very proud of the Recruit case. I mean, I think if there was more discourse and more communication between us, we would have come in and done what you wanted us to do. We're not stonewalling.

Mr. LANTOS. The only point I am making now, Mr. Kemp, is that on the one hand the testimony I get is that you don't know what companies are Japanese owned. Is that correct?

Mr. KEMP. We've never been asked for that.

Mr. LANTOS. OK.

Mr. KEMP. Suddenly these hearings come up and we're expected to have answers. We could not get the answers right now.

Mr. TROY. Congressman Lantos, please understand what you're asking us to do. We are a law enforcement agency and we're supposed to apply the law equally across the board. We have no enforcement need to know the nationality of the ownership of a company. For every example you can give regarding the Japanese, we can give you one regarding an American company.

It was EEOC in 1984 that went after Honda and Nissan because our Chairman was on an airplane and simply saw a picture of employees that included the same kind of employee. We did systemic charges. We ruled in favor of the employees. We also did the same with General Motors.

Mr. LANTOS. That's the great advantage of flying commercial when you are a public official; isn't it?

Mr. TROY. Now, I know you're going to have the last word, I understand that. But all we want you to understand is that we have come a long way in trying to become a solid law enforcement agency. Therefore, we have no need to know who owns the company. We want to know what happened, to whom it happened, how many times did it happen.

Is it a pattern or a practice? If so, then let's find discrimination, get it over with, and make the people whole who lost what the Congress says they should have. Now, if you want us to ask for information on the nationality of company ownership, obviously we can. That's very easy. We would have to go before OMB to point out the need. They would have to pass on it because we would be asking more than 10 people for that information. But the fact is that we have no enforcement need for it.

Mr. LANTOS. Well, before I yield back to my colleague, let me just say that a number of us in the Congress have been trying to get legislation through which would provide us with information on ownership of resources in the United States by foreign companies. The administration has not been friendly to this proposal for a variety of reasons. But the fact is that the topic is not a new topic. We want to know who owns what in America, and we want to know whether these people who own parts of America comply with American law or not.

Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I just want to clear up this matter about foreign-owned companies and whether you keep data on that or not. I don't want you to go away from this subcommittee hearing thinking that all of us are in agreement that you should, in fact, have that as a checkoff on the form. I'm not sure that I would agree.

I say this as a person who was not born in the United States, who is a foreigner, naturalized American. Whenever I see a form that has as a checkoff whether someone is a native-born American or not, I always get a little nervous. I think I would be more concerned if someone is saying that the EEOC is not fully investigating their charge of discrimination on an individual case more than I am concerned about whether the EEOC is going to keep data on companies that are or are not foreign owned.

Maybe it's a good idea and maybe you should have that checkoff, but I think that we need to study that a little further whether then by doing so the person is going to think that his charge of discrimination against the company is going to have less or more weight because a company may or may not be foreign owned. I worry about that, and I say this as a naturalized American.

I know that Congressman Shays did not have questions previously, but I know that this questioning has stimulated more questions in his mind. So, Mr. Chairman, I don't know——

Mr. LANTOS. Congressman Shays, do you want to be recognized?

Mr. SHAYS. Thank you, Mr. Chairman. I yield to the gentleman. I'll follow you.

Mr. MARTINEZ. I was just looking at this form, the EEO form. It says parent company. Almost every company in the United States is owned by a parent company in Japan and has to have that Japanese parent company name in there. Jim, you were shaking your head.

Mr. TROY. That's one of the ways we use to recognize the ones that we got.

Mr. MARTINEZ. OK. So, you know, maybe a box is a superfluous thing if you have this. But if you can't identify it in every case, then maybe it isn't. I have no problem with having a box on there.

I am an American-born citizen, but I would say the analogy that you use, Ms. Ros-Lehtinen, really doesn't apply here because you are an American citizen, naturalized or otherwise. You are an American citizen. You're entitled to every privilege that any other American citizen has with the exception of running for President.

But these companies are not American citizens that own these companies here. They are here on green cards through the Immigration, which brings me to another point.

You know, I don't understand why, and the chairman was trying to illustrate it, why the agencies don't cooperate a little more and interact a little more because in order for one of those managers of one of those companies to come here to run that American-owned company, he's got to get a work visa. They've got to get a work visa.

The INS has a record of that. Why couldn't they simply supply you with that information because in the INS, in their records, they've got to identify the company that they're representing? That's an easy way to get that information. They've got computers over there. Have them run a list off on a computer and get it to you.

You know, besides that, there is the other way, obviously. I guess the big culprit here might be like Jim says, if they're going to ask more than 10 people for information, they've got to get permission. I would think that as an agency responsible for upholding the law of this country, making sure the companies uphold it, that you wouldn't need to do that. But if that's the case, maybe you ought to concentrate on the INS and ask one agency for that information.

Mr. TROY. Please understand that we cooperate well together. We have memos of understanding, historical memos of understanding, with the OFCCP. We share information with INS, with the special counsel of the Justice Department as a result of IRCA. We have those kinds of agreements, and we talk to each other. But understand again, this is not an area which we have shown an identified need to talk to each other.

Mr. MARTINEZ. Well, I think we have identified for you, at least, a need to do this. Maybe in the future you'll go to INS and ask them for that information. It should be a simple thing to get it.

Even what's more important is in the area of Federal contracting. As a foreigner doing Federal contracting, they've got to register. You ought to have all of those names; don't you?

Mr. BIERMANN. Not in the OFCCP files. We have the names of all contractors in our files, and we can—with some effort. We have 92,000 contractor establishments listed in the EEO–1 data bank identified as Government contractors. In order to identify which of those 92,000 employee facilities are Japanese owned, we would have to do some cross-checking. It's not an impossible task. I presume, Mr. Chairman, that we could get the information.

But again, as Jim Troy mentioned, since we have a selection system in place to select contractors for compliance reviews, and since the ownership of the company is not, in our view, at this point, an appropriate criteria to determine which contractors ought to be reviewed, I don't know why we would want to gather the information.

In a small sample of the reviews that we have done, we have looked at about 12 Japanese companies, about 40 establishments that we've reviewed of those companies, and the findings in those compliance reviews are not dissimilar from the findings that we have in other reviews of American-owned companies.

That, plus the fact that the courts have consistently advised us that whatever selection system we used, in order to be constitutionally acceptable, must be based on a neutral method that is not arbitrary, that we have used the EEO-1 report for that purpose.

I'm not at all sure—we'd have to get advice of counsel—I'm not at all sure if we selected contractors for compliance review because of ownership being national or domestic or international or domestic, it would pass the legal muster.

So the question is whether or not we really need the information for the conduct of our business. At this point in time, it's our view that we probably do not.

Mr. MARTINEZ. I'm wondering here that if the congressional committee wants to know if this is a pattern or practice among foreign-owned companies against American citizens, and especially those doing Federal contracting, would there be any constitutional law against the committee knowing that? That's our responsibility.

So if the committee were to request that information, I would suspect that, the administration being cooperative or not, that that information should be forthcoming.

Mr. BIERMANN. Whatever additional information the committee wants, Congressman, we'll certainly get it for you.

Mr. MARTINEZ. Mr. Chairman, I suggest that we ask for the information of at least those Federal contractors, the names of the foreign-owned companies that are doing Federal contracting.

Mr. LANTOS. I'd be very pleased to do so. I find my colleague's line of questioning very reasonable. I find, frankly, your answers very evasive. There is no presumption that American-owned companies will discriminate against American citizens in management positions. There is evidence that Japanese companies do.

Therefore, it is necessary to select out for statistical purposes companies where the historical precedent clearly indicates that they discriminate against American citizens and other subcategories like women in management positions. I mean, that should not be too difficult to cope with.

Mr. BIERMANN. I understand that, Mr. Chairman. I would like to make one point, if I may. That is that it is not that we don't do compliance reviews of Japanese companies. We do compliance reviews of Japanese companies. They have been done around the country in all of our 10 regions. The selection of the compliance reviews, however, is based upon the EEO-1 data which compares utilization of minorities and women, compares them separately——

Mr. LANTOS. But not in managerial positions.

Mr. BIERMANN. Yes, Mr. Chairman, it does, not alone in managerial positions but it gives extra weight to those EEO-1 categories that are in management, professional, and technical jobs. We give extra weight in the comparison to those kinds of positions.

We look at utilization of women and utilization of minorities, and we can compare similarly situated companies in the same industry in the same geographical area. Those companies which

employ fewer minorities and women. Their geographical areas are flagged in our computer system. That's how we schedule compliance reviews.

If a Japanese company is not hiring minorities or women, they will be so flagged, and have been so flagged, which was the cause of the reviews of those companies that we have done. So it isn't as though they are escaping the concern of OFCCP, it is that they are being built into a larger system which includes companies of all kinds, not just Japanese.

Mr. LANTOS. I just have two questions that I'd like to raise. You are free to answer them, Mr. Kemp, or refer them to one of your associates.

Ms. ROS-LEHTINEN. Mr. Chairman, I was just going to remind you that Congressman Shays had yielded to——

Mr. SHAYS. I would like to follow you.

Mr. LANTOS. OK. When the former Chairman of the EEOC, Clarence Thomas, testified before the subcommittee some time ago, he defended the shift by EEOC away from filing class action suits. He stated that the resources of EEOC could be better used to protect and secure remedy for individual victims of discrimination. This is what Mr. Thomas' position was.

Yet, we have heard testimony from five individuals this morning who are asking, "Why isn't the EEOC filing a lawsuit on my behalf? What chance do I have as an individual?" There are very limited resources against the rich and powerful Japanese company.

How do you, as the current EEOC Chairman, respond to these people and others like them?

Mr. KEMP. Less than a week ago, I was out in Chicago where we settled a class action suit against AT&T for $66 million. It was the largest judgment that EEOC has ever received. That's going to 13,000 people in a class action.

I'm not speaking for Clarence Thomas, but I do think that he felt that the agency really had its hands full in enforcing the rights for people that were being discriminated against instead of bringing statistically driven numbers cases which appeared to a lot of us were our downfall in the late 1970's. That type of case is tremendously expensive and we didn't do that well with them.

I think also, and speaking again for myself, that the labor market is changing greatly. In 1987, it was estimated that the Fortune 500 would have 10 percent less employees in 1997 than it had in 1987. If anything, that figure was underestimated.

We would never think of having a statistical case against Sears & Roebuck right now. They are downsizing. They are not expanding. Eighty percent of the new jobs in the country are being created by companies with 50 or less employees.

The educational requirements today are roughly double the requirements that they were in 1964. From 1955 to 1967, sort of the end of the mass production assembly line businesses, we were creating 1 million jobs a year. In the 1980's, we were creating 2 million jobs a year.

Mr. LANTOS. Would you mind answering the question I asked?

Mr. KEMP. We do bring class actions. I give as an illustration the class action last week. We do not bring statistical cases if the work force of the employer differs from the local makeup of the work

force. The employer is not automatically guilty of discrimination. They are terribly expensive cases. Statistical cases are what has got us into a lot of the economic troubles we're in.

Mr. LANTOS. So you think that the plea of our victim witnesses earlier this morning has no validity? They are making a plea to you, "Why don't you sue on our behalf? We have no money."

Mr. KEMP. We have 59,542 charges just in 1990. I believe them. Less than 1 percent of the people that think they are discriminated against come to EEOC. I think we have a crime wave of discrimination. I invite you to come over and see what we're doing at EEOC, you and your staff.

Mr. LANTOS. My final question, Mr. Kemp: You have been public in your opposition to the House-approved civil rights bill including provisions for punitive damages; is that correct?

Mr. KEMP. No.

Mr. LANTOS. You are in favor of the House-passed bill?

Mr. KEMP. I have my own views on punitive damages. I think that they should be increased. When I was teaching law, if my class was sort of sleepy in the morning, I would say if we were really serious about doing away with discrimination in the workplace, we'd make it a capital crime. This would get my students upset.

But there is every indication that capital punishment is a great deterrent to an economic crime. I used to compare the United States to the Soviet Union. The average sentence for murder there was 3 years. There were a lot of economic crimes that were capital crimes in the Soviet Union. No, I am for increased remedies, very much so.

Mr. LANTOS. Congressman Shays.

Mr. SHAYS. I don't know if I got off the wrong side of the bed this morning, but I'm trying to make sense out of this hearing. We had five people that had very compelling testimony. But the last thing I feel justified in doing is saying that that's a true sample. It may be or it may not be.

I'm not sure our staff just plucked out five people who worked for Japanese firms and said, "Are you being discriminated against?" I don't know what that would show. I don't know if the five we would pluck out would have proved that there wasn't or if there was. So I don't take the testimony as a sample of what's happened.

But what I do take it as is very disturbing information. There's a part of me that says culturally it's probably likely that Japanese companies may, in fact, discriminate against women. So that's one side of me.

The other side of me is kind of aligned with my colleague here who gets a little concerned that we may be choosing to focus on the Japanese because right now they're beating us economically, and we're letting them get away with a lot that they shouldn't get away with. But most of that is our own problem.

Having said that, I do feel that it would be helpful—I don't blame you for not coming in with statistics, coming before this hearing—you know, you haven't been asked to do this in the past, but I guess what I'm left with is a feeling that——

Ms. ROS-LEHTINEN. Congressman, just before you go on, I just wanted to say I don't recall ever saying—I'm glad you sympathize with what I said, except that I never said that we were beating up on the Japanese because they may be beating up on us economically. I did not say that. I did not stick up for discrimination in any way.

Mr. SHAYS. No, no. I thought you made reference about the fact that you were troubled by a check off that would say whether you were a foreign company or not.

Ms. ROS-LEHTINEN. Yes.

Mr. SHAYS. So that was the reference I was making to my colleague, whether or not we should be asking the companies that are foreign, you know, have a check off that says they are foreign. So I'm going through this ambivalence. I think we need to know certain information. I don't know how I come out on this.

I do think, though, the bottom line to this hearing to me is that there is something that has to be looked at, that we can't let it dangle here. It would be helpful to have you do a more accurate study of whether, in fact, there might be cultural factors that lead to discrimination by foreign companies discriminating.

If we decide that that's true, then I think we might have to take some affirmative response to that where we actually focus in on some of those companies, whether they are Japanese or other Asian companies or European companies and so on.

So I guess what I'm saying to you is that I don't quite agree with my chairman that you should have had it now, but I do agree that it might be helpful in the future. I would really like to see the next time we have a hearing on this to see if you think that's possible.

Mr. Biermann, the question I guess I'm left with is that you said you weren't sure it would be legal. I'm not sure if it was a communication issue. I'm not hearing properly. Are you saying that you don't think it would be legal to identify companies as foreign companies?

Mr. BIERMANN. No. I think it's certainly legal to do that. The issue is whether or not we would have an objective and neutral system if we chose to conduct compliance reviews of companies because they were foreign held.

The courts in the premier case of New Orleans Public Service have ruled that whatever system is used to protect the guarantees of the Constitution, there has to be a neutral system in place that is not arbitrary.

The system that we have in place, which has met the requirements of the court, is based upon comparative data using EEO-1 reports for companies in a similar industry and a similar geographical area. From that selection system, Japanese companies have been selected, but it's been a neutral system that's caused them to be selected. I don't know——

Mr. SHAYS. Could I ask you this? Is it possible that you would simply look at a selected group of American companies, not selected but random sample, a random sample of Japanese companies, a random sample of European companies so it would be random, and then compare to see if there were any cultural or other factors that—when I say cultural, I'm not using that as an excuse. I'm just saying that we feel very strongly that discrimination is not accept-

able. See if there is a pattern. I mean, the fact is that we had five very compelling statements earlier.

Mr. BIERMANN. I would see no prohibition in doing that.

Mr. SHAYS. The other question I guess I want to ask is that you hear 59,000 cases. We are just famous for demanding you provide us information, and we're not always, nor is the administration, very candidly eager to give agencies the people they need. But when I take 59,000 complaints, how many employees is that? How many employees work for you in dealing with 59,000 complaints?

Mr. KEMP. 2,853.

Mr. SHAYS. How many?

Mr. KEMP. 2,853.

Mr. SHAYS. So I'm left with the feeling that we have definitely left you quite a workload.

Mr. KEMP. Sure.

Mr. SHAYS. Let me just conclude. So ultimately you have to decide in some cases not to do things that you would like to do. I mean, that has to be a given.

Mr. KEMP. Yes. But we're committed to enforcing the law for all those covered. We are given extra responsibilities. The chairman mentioned my involvement with the ADA. Congress passed it, but they didn't give EEOC very much money to enforce it.

When Congress changed the Fair Housing Act a couple years ago and gave HUD responsibility of overseeing discrimination against disabled people, they upped the budget by 25 percent. I would like fairness. I think that EEOC is a stepchild to Congress.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. BIERMANN. Congressman Shays, may I just add something to your last comment? Let me just make a suggestion to you, sir. Rather than establishing a selection process on a random basis and doing a predictive study, what we could do and what I suggest we may want to do is look at reviews we've already done more thoroughly than we've been able to do in preparation for this hearing.

As I mentioned, we have done compliance reviews of Japanese firms around the country. We could randomly select the results of those reviews and similarly randomly select the results of domestic companies that have been reviewed during the same period of time and make you a more definitive report as to the differences or similarities that may have been found as a result of those reviews.

Mr. SHAYS. The one thing I can't help but wonder, though, as we do this, I wonder if someone is going to be less inclined to bring a complaint against a foreign company than they would against an American company, feeling that in the long run they are going to pay a dearer penalty if they do.

I wish I had asked that earlier, but anyway, I look forward to these hearings continuing.

Mr. KEMP. What's your reasoning behind that? I'm just curious.

Mr. SHAYS. I am just wondering if they just feel that maybe there might be more of a social conscience with their own American company as opposed to the foreign company. We heard testimony that they felt within the foreign company one and the others agreed that it was an institutionalized process.

Whereas, with the American companies, they felt they encountered discrimination. They felt it was more individual, that it wasn't necessarily an institutional problem within the company.

Mr. KEMP. I see.

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. Just to ask one final question about the potential checkoff on the form about whether a company is foreign owned or not. As interesting as data that could be gathered if such a checkoff existed on the form, do you believe, Chairman Kemp, that having such information on the EEOC form could help you discharge your duties in investigating charges of discriminations which are filed by employees?

Mr. KEMP. Although I've been aware these hearings were going to take place, I really hadn't considered it. The chairman asked us to identify Japanese-owned companies, but I was not aware of a request to add a checkoff for identifying foreign-owned firms on the EEO-1.

Ms. ROS-LEHTINEN. Do you know of any other Federal agency which you believe might be better suited to handle the accumulation of such data?

Mr. KEMP. Well, I think that if there's a study done in this area, GAO might be the best to do it or the Commerce Department. I do think it's a study that's outside of our expertise. We have done a couple of studies, for example, in looking at tenured faculty and a couple of other things that we've contracted out.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Mr. LANTOS. I want to thank all of you for your testimony.

The next panel consists of Mr. Masumi Yamaguchi, president of Nikko Securities; Mr. Toshi Amino, executive vice president of Honda of America, accompanied by Susan Insley and Don English.

[Witnesses sworn.]

Mr. LANTOS. We are pleased to have all of you before us. Your prepared statement will be entered in the record in its entirety. We will ask when we call on you to very briefly summarize your testimony and omit the company descriptive materials which, in some cases, make up an inordinate amount of the testimony. We will wish to deal with the issue at hand.

We will begin with you, Mr. Yamaguchi. You may proceed to summarize your prepared statement.

STATEMENT OF MASUMI YAMAGUCHI, PRESIDENT, NIKKO SECURITIES CO. INTERNATIONAL, INC., ACCOMPANIED BY EVAN STEWART, GENERAL COUNSEL

Mr. YAMAGUCHI. On behalf of the Nikko Securities Co. International, Inc., I welcome this opportunity to testify before the Employment and Housing Subcommittee on the very important subject of employment practices and policies.

At the outset, I should inform the subcommittee that I have been in my present position only since April of this year. Prior to that time and since December 1984, I was executive vice president in charge of Nikko's Chicago branch office. Prior to my taking on that position, I had various jobs of increasing responsibility at Nikko's parent company in Japan.

Nikko's written statement, which was supplied to the subcommittee last week, sets forth in some detail Nikko's record with regard to its employment practices and policies. Without attempting to reiterate our statement, let me highlight the following points.

First, until only recently, Nikko was a very small company. Prior to 1985, we had no more than 65 employees nationwide. Today we have 290.

Second, Nikko's practices and policies are fully consistent with all applicable laws and are set forth in the company's employee guide, a copy of which is given to each employee.

Third, Nikko has consistently complied with its own practices and policies. Nikko's hiring, promotion, and compensation decisions are made without regard to race, sex or national origin.

Fourth, Nikko, like virtually all major international companies of which I'm aware, employs some staff from its parent company. As is clear from that data we have provided to the subcommittee, those people, sometimes called rotators, make up a small percentage of our overall staff. No positions are reserved for rotators, and no Americans are foreclosed from holding any position at Nikko.

Fifth, as is also clear from the data we have provided to the subcommittee, not only do Americans hold a substantial majority of the key positions at Nikko, we have a very good record with respect to the hiring and promotion of women.

Sixth, Nikko is the only Japanese-affiliated company of which I am aware that has successfully defended itself in a class action title VII discrimination lawsuit. We have already provided the subcommittee a fair amount of data on that litigation.

Should the subcommittee wish to question further on that matter or on specific legal issues generally, I may ask for the assistance of Nikko's counsel, Mr. Evan Stewart, who is here with me today.

Seventh, I note that one of the plaintiffs in the attempted class action litigation has today given testimony before the subcommittee. I do not think it would be productive for me to comment on any specifics of that testimony beyond the fact that she was given every opportunity to make her case against Nikko in the litigation, and that her sworn testimony was before the Federal judge who prevented her from bringing on a class action against Nikko. All that is a matter of public record. The case is now closed. For ourselves, we are content to let the matter rest there.

In closing my brief oral remarks, let me state again that Nikko is very proud of its record in the area of employment practices and policies. We intend to continue our good record in the future.

[The prepared statement of Mr. Yamaguchi follows:]

STATEMENT ON

EMPLOYMENT PRACTICES AND POLICIES

By

MASUMI YAMAGUCHI

PRESIDENT

THE NIKKO SECURITIES CO. INTERNATIONAL, INC.

Before the

SUBCOMMITTEE ON EMPLOYMENT AND HOUSING

COMMITTEE ON GOVERNMENT OPERATIONS

U. S. HOUSE OF REPRESENTATIVES

July 23, 1991

On behalf of The Nikko Securities Co. International, Inc. ("Nikko") I welcome this opportunity to testify before the Employment and Housing Subcommittee on the very important subject of employment practices and policies. Nikko has an exemplary record in this area and, in fact, is the only Japanese-affiliated company of which I am aware which has successfully defended itself in a class action Title VII discrimination lawsuit. Before I explain the nature of that litigation more fully, however, I would like to briefly describe Nikko's history and employment policies and practices in general.

Nikko's History

Nikko is a financial services firm employing at present 290 people. Incorporated in Delaware and headquartered in New York City with small offices in Chicago, Los Angeles and San Francisco, Nikko provides sophisticated financial services to a client base consisting primarily of institutional investors in the United States and abroad.

Nikko has existed in its present form in the United States since 1963. The Nikko Securities Co., Ltd. ("Nikko-Tokyo"), the parent corporation of Nikko headquartered in Tokyo, Japan, has had a presence in the United States since 1955.

Prior to 1985, Nikko never had more than 65 employees nationwide. With the surge in Japanese investment in this country in the mid-1980s, Nikko experienced a corresponding rapid growth, reaching a maximum employee count of approximately 350 in early 1988. Since then, as a consequence of the October 1987

market crash and general industry conditions on "Wall Street," Nikko's size has decreased to its present level of 290 employees.

Nikko's EEO Policies

In the Spring of 1986, during the early months of Nikko's expansion, Nikko hired its first Director of Human Resources. That individual, who had over 20 years experience in human resources, was specifically charged with formulating policies and procedures to address, among other things, the requirements of Title VII. As part of that process, the Nikko Employee Guide was prepared. The Guide codifies Nikko's policies with respect to its personnel practices. For example, Section 2.4 of the Guide, which is entitled "Equal Employment Opportunity," sets forth the following:

> "It is Nikko's policy to offer equal employment opportunity to all persons without regard to race, creed, color, sex, age, national origin, ancestry, marital status, religion, physical or mental handicap, or veterans' status. No applicant is to be discriminated against or given preference because of these factors. This policy applies to recruiting, hiring, promotions, upgrading, layoffs, compensation, benefits, termination, and all other matters, privileges, terms and conditions of employment.
>
> "It is the established policy of Nikko to effectively utilize our available Human Resources by selecting the best qualified person for the job to be performed. We have always given appropriate attention to such factors as educational background, previous experience, proven skills, desirable character traits and potential for growth and development. The personnel we have hired and promoted in the past and those to be hired and promoted in the future have been and will continue to be selected from all applicants on the basis of qualifications which we feel are essential in order that an employee may perform well. These include such factors as ability, availability, capability, aptitude, experience, education, health, and a willingness to work.

"The Human Resources Division has been assigned the responsibility of ensuring that all phases of Human Resources Administration are in harmony with this policy. The responsibility for administering and complying with this policy on a day to day basis has been delegated to all Nikko Division and Department Managers with respect to employees within their jurisdiction."

Similarly, Section 2.5 of the Guide, which is entitled "Sexual Harassment," sets forth the following:

"Nikko, as a part of its commitment to equal employment opportunity, prohibits acts of harassment on the part of its employees on the basis of race, sex, color, religion, age, national origin, or condition of handicap. The Equal Employment Opportunity Commission has published guidelines relating specifically to the subject of sexual harassment. We endorse these guidelines in keeping with our long standing commitment against any form of harassment in the work environment.

"The EEOC guidelines provide that unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly, a term of condition of an individual's employment; or

2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

"In keeping with the spirit of these guidelines, we reaffirm our belief that every employee must be treated with dignity and respect regardless of race, sex, color, religion, age, national origin, or condition of handicap. We ask all of you to help us meet our obligations by acting in accordance with our stated commitment and by bringing any violations of this policy to our attention.

"If any employee feels that he or she is being harassed, or that employment decisions are being made for improper reasons, please contact your supervisor or the Director of Human Resources immediately to discuss the matter and bring it to our attention. We fully understand that this is a sensitive issue, and it will be treated in a confidential and impartial manner."

Day-to-day responsibility for the enforcement and monitoring of Nikko's personnel policies is that of the firm's Director of Human Resources. Our current Director joined Nikko in April of this year. He has more than 15 years experience in human resources, and was most recently Regional Director of Personnel for Dean Witter Financial Services Group. I am confident that, under his leadership, Nikko's hiring, promotion and compensation decisions will continue to be made without regard to race, sex or national origin.

Staff From Nikko-Tokyo

Nikko is similar to many American subsidiaries of foreign corporations (and of foreign subsidiaries of American corporations) in that it employs some staff sent from its parent corporation (e.g., Credit Suisse, Bank of Rome, National Westminster Bank, PLC, etc.). The majority of these employees stay at Nikko for a period of from two to five years, and are not assigned to fill permanent job openings at Nikko. In some cases, however, an employee from Nikko-Tokyo may remain at Nikko for a longer period where that employee's experience makes him or her the best qualified individual available to the company. This occurs most often in securities trading positions which

equire extensive prior experience with Japanese financial arkets or an ability to deal directly with sophisticated apanese institutional clients. Thus, for example, in certain reas of Nikko, such as Equity Sales in New York and Futures and ptions for Japanese clients in Chicago, the professional ersonnel consist largely of Japanese nationals.

Staff sent from Nikko-Tokyo normally have qualifications hich warrant a minimum level officer title (Assistant Vice resident). The basic reason for this is simple business sense--"rotating" employees overseas is extremely expensive and it is not efficient to do so unless an employee has proven that he or she can contribute to Nikko in some significant way. Unless an employee has reached a level of competence at Nikko-Tokyo that would be the equivalent to Assistant Vice President or above at Nikko, it does not make sense to invest the money necessary to send the person to the United States. Furthermore, it is my understanding of the U. S. immigration laws and policies that only well-qualified non-U. S. citizens are eligible for long-term employment stays in this country. As a result, only those Nikko-Tokyo employees who can meet that standard are eligible to be rotated in the first place.

There are no positions at Nikko that are "reserved" for staff from Nikko-Tokyo. Locally hired employees are eligible to fill any and all Nikko positions. Indeed, the second-highest ranking officer in the entire company is an American--Stephen Axilrod, the firm's Vice Chairman. Furthermore, Nikko's Japanese staff is underpaid relative to locally hired employees, even

after consideration of cost-of-living adjustments given to Tokyo-based employees living outside their country. For example, of two traders in our Fixed Income area performing at the same level--one a rotator and one locally hired--the locally hired trader would be paid at a higher rate. This pay scale differential merely reflects the fact that salary levels in the financial services industry are higher in the United States than in Japan.

In short, staff from Nikko-Tokyo have no special advantage over locally hired Nikko employees in any term or condition of employment.

Nikko's Statistical Profile

In accord with the Subcommittee's request, set forth below is a statistical profile of Nikko. For the sake of convenience, the job groupings are those used for EEO reporting.

Job Groups	Total	U. S.	Male	Female	Japanese Rotating Staff
Executive	4	1	4	0	3
Manager	34	20	33	1	14
Professional	123	92	95	28	31
Technician	10	10	7	3	0
Sales	21	11	20	1	10
Clerical	98	98	41	57	0
	290	232	200	90	58

As is clear from the above profile, the rotating staff from Tokyo is a small percentage (20%) of Nikko's total workforce. Americans locally hired hold substantial majorities of the managerial, professional and other key positions at Nikko. Furthermore, Nikko has a commendable number of women in those important positions, and I strongly assert that female employees are not confined to inferior jobs or job titles or otherwise prevented from advancing in their careers at our firm; indeed, of the 54 promotions at Nikko since January of 1986, 23 (42.6%) have gone to women.

Nikko's EEO Class Action Litigation

In June of 1987 and/or later in February of 1988, three then current or former Nikko employees filed charges of discrimination based upon race, sex, age and national origin with the Equal Employment Opportunity Commission. The attorneys representing those individuals subsequently requested "right to sue" letters prior to the EEOC reaching a determination on the charges. In November of 1988, a lawsuit was filed in the federal district court based in New York City.

By their suit, plaintiffs sought injunctive and declaratory relief, as well as unspecified monetary and liquidated damages. Those recoveries were sought on behalf of themselves and "on behalf of all female former, current and future employees of [Nikko]."

Nikko strongly opposed the individual plaintiffs' attempt to proceed on behalf of such a class. And pursuant to the dictates of Rule 23 of the Federal Rules of Civil Procedure, as well as the requirements of the district court's local rules, the focus of the litigation was on that issue.

On August 10, 1990, after the parties had briefed and argued the class action issue, the federal court handed down a 23 page decision in which plaintiffs' motion to proceed on behalf of a class was denied. A copy of that decision is attached hereto (it is also reported at 54 Emp. Prac. Dec. (CCH) ¶ 40,267). Plaintiffs subsequently sought reargument of that decision. On November 16, 1990, the federal court handed down an eight page decision affirming its earlier ruling. Approximately one month later, Nikko and the three individual plaintiffs reached an accord on their individual claims and their case was terminated.

Although the decisions speak for themselves, it is important to note that the court analyzed plaintiffs' evidence under both a "disparate impact" and "disparate treatment" analysis, and found it lacking as to each. More important was the court's finding that the plaintiffs had failed to meet the "basic requirement of establishing the existence of an aggrieved class" (August 10, 1990 Decision at page 11). Not only did the plaintiffs "fail to provide the Court with any systematic statistical evidence that [Nikko] is discriminating against women on a class-wide basis" (id. at page 12), but Nikko had presented abundant affirmative evidence to counter the charges

of discrimination, including deposition testimony from Nikko managers and sworn affidavits from seven female Nikko employees specifically identified by the plaintiffs as discrimination victims.

I note that one of the individual plaintiffs in this litigation is to give testimony before the Subcommittee. Although we wish Ms. Minushkin no ill will, we respectfully point out that she has a rather obvious "axe to grind," especially in light of the outcome of the litigation. We trust that whatever testimony she does give before the Subcommittee will therefore be judged accordingly.

Conclusion

In sum, Nikko is proud of its record in this area. At the same time, as an American company we recognize the importance of continuing to live up to the letter and spirit of the U. S. discrimination laws. We pledge to be ever vigilant so that our record continues to be exemplary.

Mr. LANTOS. Thank you, Mr. Yamaguchi. Let me just say for the record that your former employee who testified earlier today testified under oath that she very much wanted to carry the case forward but could not match the gigantic financial resources of Nikko Securities. That is why she settled the case.

So I think it's important for you to understand that your former employee wanted to pursue this case in court, but she, as an individual of very limited means, could not take on Nikko Securities, which is a giant and global corporation.

So the fact that the case was settled is certainly no indication that no discrimination took place.

But we have a number of questions that we would like to raise with you. Let me first move on to Honda of America. Mr. Amino, how long have you lived in the United States?

Mr. AMINO. Mr. Chairman, 15 years now.

Mr. LANTOS. Fifty?

Mr. AMINO. Fifteen.

Mr. LANTOS. Fifteen years.

Mr. AMINO. I'm 56 years old.

Mr. LANTOS. Well, you are a very young man, and you look fine and I'm glad.

Mr. AMINO. Thank you.

Mr. LANTOS. Where have you lived for the last 15 years?

Mr. AMINO. Pardon?

Mr. LANTOS. Where have you lived in the United States?

Mr. AMINO. Three years in California and 11 years here in Ohio.

Mr. LANTOS. You are the executive vice president of Honda of America?

Mr. AMINO. Yes, sir.

Mr. LANTOS. Is that the top position in the United States for Honda of America?

Mr. AMINO. As far as Honda of America Manufacturing is concerned, we have a president, three executive vice presidents, and I'm one of them.

Mr. LANTOS. And the president has been here for how long, may I ask?

Mr. AMINO. About, I believe, 4 years—3 years now.

Mr. LANTOS. And has he had any other assignments in an English-speaking country?

Mr. AMINO. I'm sorry?

Mr. LANTOS. He spent 3 years in the United States, you say.

Mr. AMINO. Yes.

Mr. LANTOS. May I ask how good his English is?

Mr. AMINO. He speaks English and understand English better than I do, and I'm shameful about that.

Mr. LANTOS. Well, you speak excellent English. I want to commend you and I welcome your testimony.

Mr. AMINO. Thank you very much.

Mr. LANTOS. You have submitted a very lengthy prepared statement which, in its entirety, will be entered in the record. You may proceed and summarize whatever you wish to summarize. I am anxious to get to the questions. Much of this prepared statement deals with general company matters that are of very little interest to this subcommittee. So would you like to summarize the answer

to the questions we raised with respect to employment discrimination?

Mr. AMINO. Mr. Chairman, I believe that you have our written material submission.

Mr. LANTOS. Yes.

Mr. AMINO. Also we prepared for our oral testimony material which is much shorter, I believe. I would like to ask my colleague, Susan Insley, who is senior vice president at Honda of America to make oral testament, if I may.

Mr. LANTOS. Well, I am prepared to accept for the record your entire prepared statement. Certainly, we will give an opportunity for Ms. Insley to advise you and answer specific questions.

But I think you, as executive vice president, should make the opening statements. If you would like to do so, you may proceed.

STATEMENT OF TOSHI AMINO, EXECUTIVE VICE PRESIDENT, HONDA OF AMERICA MANUFACTURING, INC., ACCOMPANIED BY SUSAN INSLEY, SENIOR VICE PRESIDENT, AND DON ENGLISH, ASSISTANT VICE PRESIDENT, ADMINISTRATION

Mr. AMINO. Mr. Chairman and members of the subcommittee, my name is Toshi Amino, executive vice president of Honda of America Manufacturing, Inc. My responsibility, as I said, is as one of three executive vice presidents. I cover mainly the administration, purchasing, so-called support-type business. But in addition to that, I'm involved in the production and so forth as one of the executive vice presidents.

I am joined today by, as I said, Susan Insley, my colleague, senior vice president of Honda of America, and Don English, assistant vice president in charge of administration. Also, he is the officer responsible for the compliance and the conciliation agreement with the EEOC.

In response to your request, my testimony will address, No. 1, our company's expansion and staffing in the United States and our recruiting and hiring practices; No. 2, changes in our recruitment and hiring practice and reasons behind those changes; No. 3, our evaluation of the current situation at Honda of America with regard to equal employment opportunities.

Honda of America employs 10,000 associates at four manufacturing plants in central Ohio and west central Ohio, representing an investment of $2.3 billion. Honda's intention to locate U.S. manufacturing facilities in Marysville, OH, was announced in October 1977. The factors which led to the decision to locate in Marysville are, No. 1, active encouragement from the State of Ohio whose officials suggested the Marysville site.

No. 2, much of the land was purchased from the then State-owned Transportation Research Center. Honda purchased the remainder of the TRC for $31 million in 1988. No. 3, superior access to the interstate highway system, such factory utility service——

Mr. LANTOS. Mr. Amino, I don't intend to interrupt you, but we really are not interested in the historic evolution of Honda of America. We are focusing on a very narrow subject. Why you located in this particular community of Ohio may be of interest to students of business history, but they are not the concern of this sub-

committee. So may I ask you to move on to the issue which is the subject of our hearing, which is the charges of employment discrimination by Honda of America?

Mr. AMINO. The reason why I'm telling why we are located here is that we saw that it's related to our hiring practice. So that's the reason why I would like to tell you those kind of things. I understand your point. So let me try to summarize.

Mr. LANTOS. I would be grateful if you did.

Mr. AMINO. Also, one of the factors is air pollution regulations which did then and do today make it extremely difficult to locate a manufacturing plant in urban area.

So, initially we decided to have a hiring radius of 20 miles. Then we expanded in 1986 to 30 miles. Also, in 1987, we expanded farther. Now we have 15 counties which comprise our primary hiring area around four plants. Regarding our work force in 1979, we began operation with 64 associates. By mid-1984, we employed 2,100 production associates of whom 12.5 percent are female and 1.2 percent are black.

At that time in 1984, a charge was initiated against Honda of America by EEOC under Title VII of the Civil Rights Act of 1964, for alleged discrimination against females and blacks, in hiring and promotion, and against non-Japanese in engineering positions.

The EEOC also asked to investigate our employment practices with regard to age. As a result, a letter of violation was issued in 1986 under the Age Discrimination in Employment Act for alleged discrimination in employment practice for individuals over the age of 40.

Honda of America cooperated fully with the EEOC investigation which led us to undertake a review of our company's hiring decisions. As a result, we and the EEOC were not satisfied that proper hiring decisions had been made in every instance.

So, before entering into the conciliation agreement, with EEOC's strong concurrence, we began identifying individuals who had not been hired but who appeared to have been qualified based upon documentation in the file. As a result of that cooperative effort, prior to entering into the conciliation agreements, we hired 377 females and blacks and 85 individuals over age 40 into our production work force.

When we completed negotiations, the EEOC insisted that those associates should be compensated for what the Commission viewed as unjustifiable delay in hiring. In order to settle the matter, we agreed to pay compensation to those individuals who had been hired prior to the conciliation agreements.

Our company had already begun to increase employment of females and blacks when the title VII conciliation agreement was signed in 1988. From March 1984 to March 1988, employment of female production associates rose from 12.5 to 25.8 percent; black production associates, from 1.2 to 2.8 percent.

Since entering into the conciliation agreements, our company has actively worked with community organizations to expand employment opportunities. Those organizations that are particularly helpful include the Private Industry Council of Columbus and Franklin County, the Columbus Urban League, the Springfield

Urban League, and the Springfield Opportunities Industrialization Center.

We were pleased to receive the Employer of the Year award in 1990 from the Private Industry Council. Our efforts are reflected in our production work force today, 32.5 percent female, 10.2 percent black, and 18.4 percent over age 40. We were also required to make good faith efforts to promote females and blacks to team leaders and production staff positions in numbers that reflect the company's work force of females and blacks with more than 18 months of service.

Since 1988, of the 806 associates promoted to those positions, 15.6 percent are female and 2.4 percent are black. Honda of America was also required to increase the percentage and number of American engineers. We undertook these efforts through, No. 1, expanded recruitment of engineers from U.S. engineering schools; No. 2, hiring of experienced engineers; and, No. 3, promotion of associates within our company to engineer positions.

As a result today, 67 percent—or 566 individuals—of the engineers employed at the Honda of America are Americans compared with 51.5 percent—or 207—in 1988.

Prior to 1986, we did not have an organized formally administered development program for American associates.

Since then, we have, No. 1, established an associate development center with primary focus on fundamental and technical development; No. 2, formed the Together Project in which team leaders from our production plants are given 4-week assignments to our plants in Japan to work one on one with their Japanese counterpartners, as well as classroom instruction in leadership skills. Since it began in September 1988, 444 associates have participated, at an investment of $2.7 million.

No. 3, we initiated a 13-week program for our first level of management to further develop managerial and leadership skills.

In 1990, we formed the North American Production Task Group, in which associates receive 1- to 3-year assignments at Honda operations in Japan. I, myself, try to provide the leadership for this program.

Today there are 15 associates and their families in Japan. They represent a broad cross section of production and support departments, including stamping, welding, paint, assembly, quality assurance, purchasing, and administration.

We expect to triple the number of associates in Japan by March 1992, an annual investment of more than $5 million.

As we continue to increase our production capabilities in America, we will continue to fulfill our commitment to fully develop the skills, responsibilities, and diversity of our American associate.

Thank you very much for your patience.

[The prepared statement of Ms. Insley follows:]

STATEMENT BY

SUSAN J. INSLEY
SENIOR VICE PRESIDENT
HONDA OF AMERICA MANUFACTURING, INC.

BEFORE THE EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
CONGRESS OF THE UNITED STATES

TUESDAY, JULY 23, 1991

Mr. Chairman and Members of the Committee:

My name is Susan Insley, and I am Senior Vice President of Honda of America Mfg., Inc.

My responsibilities include the Company Facilities, Corporate Communications, Government and Community Relations, and Legal Departments, as well as providing direction for the management of the Transportation Research Center. I am also the officer designated for control of applications for Visas for all Japanese nationals assigned to Honda of America.

I am joined today by Toshi Amino, Executive Vice President, who was instrumental in the formation of the North American Production Task Group, about which I will refer later.

Also present today is Don English, Assistant Vice President for Administration, who is compliance officer for our company and is responsible for our EEOC Conciliation Agreements.

In response to your request, my testimony will address:

1. Our company's expansion and staffing in the United States and our recruiting and hiring practices.

2. Changes in our recruitment and hiring practices, and reasons behind those changes.

3. Our evaluation of the current situation at Honda of America with regard to equal employment opportunities.

Honda of America employs 10,000 associates at four manufacturing plants in Central and West Central Ohio, representing an investment of $2.3 billion. The plants produce Accord and Civic automobiles, motorcycles, and automobile and motorcycle engines and component parts. Today, two-thirds of the Honda automobiles sold in the United States are manufactured here. The products we make also are exported throughout the world, including Japan.

Honda's intention to locate U.S. manufacturing facilities in Marysville, Ohio was announced in October 1977. The factors which led to the decision to locate in Marysville were:

-- Active encouragement from the state of Ohio, whose officials suggested the Marysville site;

-- Much of the land was purchased from the then state-owned Transportation Research Center. Honda purchased the remainder of the TRC for $31 million in 1988;

-- Superior access to the interstate highway system, satisfactory utility service, water supply, topography and availability to rail service, as well as immediate access to one of the world's major transportation research facilities in the TRC; and

-- Air pollution regulations, which did then, and do today, make it extremely difficult to locate manufacturing plants in urban areas.

Our original hiring radius was 20 miles. This was established in response to community support in making the plant a reality, and because of the availability of a work force in the area due to plant closures and reductions caused by economic recession.

In 1986, with the expansion of our Marysville Auto Plant and our Anna Engine Plant, we enlarged our hiring radius to 30 miles. It was expanded again in September 1987, when we announced the further expansion of our Anna Engine Plant and construction of our new East Liberty Auto Plant. Today, our hiring area consists of 15 counties which provides an opportunity for diversity in the work force.

Regarding our work force, in 1979, we began operations with 64 associates. By mid-1984, we employed 2,100 production associates, of whom 12.5 percent were female and 1.2 percent were black.

At that time, in 1984, a charge was initiated against Honda of America by the EEOC under Title VII of the Civil Rights Act of 1964 for alleged discrimination against females and blacks in hiring and promotion, and against non-Japanese in engineering positions.

The EEOC also asked to investigate our employment practices with regard to age. As a result, a letter of violation was issued in 1986 under the Age Discrimination in Employment Act for alleged discrimination in employment practices for individuals over the age of 40.

Honda of America cooperated fully with the EEOC investigation, which led us to undertake a review of our company's hiring decisions. As a result, we and the EEOC were not satisfied that proper hiring decisions had been made in every instance.

Thus, before entering into the Conciliation Agreements, with the EEOC's strong concurrence we began identifying individuals who had not been hired but who appeared to have been qualified based upon the documentation in our files.

As a result of that cooperative effort, prior to entering into the Conciliation Agreements, we hired 377 females and blacks and 85 individuals over age 40 into our production work force.

When we completed negotiations, the EEOC insisted that those associates should be compensated for what the Commission viewed as an unjustifiable delay in hiring. In order to settle the matter, we agreed to pay compensation to those individuals who had been hired prior to the Conciliation Agreements.

Our company had already begun to increase employment of females and blacks when the Title VII Conciliation Agreement was signed in 1988. From March 1984 to March 1988 employment of female production associates rose from 12.5% to 25.8%, and black production associates from 1.2% to 2.8%.

Since entering into the Conciliation Agreement, our company has actively worked with community organizations to expand employment opportunities. Those organizations that were particularly helpful include the Private Industry Council of Columbus and Franklin County, the Columbus Urban League, the Springfield Urban League and the Springfield Opportunities Industrialization Center. We were pleased to receive the Employer of the Year award in 1990 from the Private Industry Council of Columbus and Franklin County.

Our efforts are reflected in our production work force today:

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As a result, today 67 percent (566) of the engineers employed at Honda of America are Americans, compared with 51.5 percent (207) in 1988.

Prior to 1986, we did not have an organized, formally administered development program for American associates. Since then, we have:

-- Established an Associate Development Center with primary focuses on fundamental and technical development;

-- Formed the Together Project, in which team leaders from our production plants are given 4-week assignments to our plants in Japan to work one-on-one with their Japanese counterparts, as well as classroom instruction in leadership skills. Since it began in September 1988, 444 associates have participated at an investment of $2.7 million.

-- Initiated a 13-week program for our first level of management to further develop managerial and leadership skills.

-- In 1990, formed the North American Production Task Group, in which associates receive 1-3 year assignments at Honda operations in Japan. My colleague Toshi Amino provides leadership for this program.

   Today, there are 15 associates, and their families, in Japan. They represent a broad cross section of production and support departments, including Stamping, Welding, Paint, Assembly, Quality Assurance, Purchasing and Administration. We expect to triple the number of associates in Japan by March 1992, at an annual investment of more than $5 million.

As we continue to increase our production capabilities in America we will continue to fulfill our commitment to fully develop the skills, responsibilities and diversity of our U.S. associates.

Thank you.

Mr. LANTOS. Thank you. Thank you very much and let me again commend you on your outstanding knowledge of what is a second language.

I have a number of questions I would like to raise. The discrimination charge against Honda was a Commissioner's charge. It was filed by then EEOC Chairman Clarence Thomas. Mr. Thomas was not known for filing trivial charges. One could argue that it had to be a rather blatant case of discrimination for Chairman Thomas to file a charge. What specifically did Chairman Clarence Thomas charge Honda was doing?

If you would feel more comfortable, we will be happy to have one of your associates answer this question.

Mr. AMINO. Yes, I would like to ask Susan Insley. She was very heavily involved.

Ms. INSLEY. Thank you Toshi. Good afternoon, Mr. Chairman. Mr. Chairman, in response to your question, I believe that the Commissioner's charge felt that we were not providing the opportunity to either recruit or hire blacks; that we were not providing sufficient employment opportunities or promotion opportunities for females; that we were not providing sufficient promotion opportunities for those blacks that we had; and that we were not providing opportunities for non-Japanese in engineering positions.

Mr. LANTOS. Ms. Insley, did you undertake your review of hiring patterns and the program of what you call "corrective hiring," before EEOC began its investigation of your employment practices at Honda?

Ms. INSLEY. No, sir. We undertook that review after the EEOC, when we received the charge by the Chairman. We also, at that time——

Mr. LANTOS. So it is fair to conclude that the review of hiring patterns and what you call a program of "corrective hiring," was the result of a charge filed by the Chairman of the EEOC Commission?

Ms. INSLEY. Yes, sir.

Mr. LANTOS. I would like to deal a little bit with your semantics, which I find troubling. You keep referring to associates. These are employees; is that not correct?

Ms. INSLEY. Yes, sir. Everyone at our company——

Mr. LANTOS. Production associates are really assembly line workers, are they not? The ordinary terminology in the American automobile industry is production line workers or assembly line workers, not associates. I understand the difference between the semantic implications, but we are talking about people who are on the production line; is that correct?

Ms. INSLEY. People who are on the production line, yes, not merely assembly. But in any of our production or——

Mr. LANTOS. Do any other automobile companies, to the best of your knowledge, refer to these individuals as "associates"?

Ms. INSLEY. Sir, I honestly don't know. I think—at one other company that comes to mind, I believe individuals may be referred to as technicians; others might be referred to as factory workers.

Mr. LANTOS. I was just wondering because I found the use of the term "associates" just a bit too cute.

Ms. INSLEY. Mr. Chairman, could I respond to that?

Mr. LANTOS. I think it would have been more helpful if they had been referred to as employees or workers, because that is the commonly accepted terminology in this country, as you well know.

Ms. INSLEY. Yes, sir. Mr. Chairman, could I respond just a moment. If I could just indulge your time for just a moment. There was no intention, sir, to be at all, as you would refer, "cute." All of the individuals who are employed by our company have since the first day we began operations in 1979, been referred to as associates.

Mr. LANTOS. That is what I find cute. That is precisely what I find cute. You are free to refer to your employees any way you choose, but since in the automobile industry these people are referred to as "workers," which is basically what their function is, the word "associate" gives a connotation which is cued to a degree of professional or participatory involvement in management that I find obfuscatory really.

I don't find that a helpful terminology. You may feel free to continue to refer to your assembly line employees as associates, but I don't think it is helpful. I don't think it is helpful. Let me move on to other things.

The statistics that you give us in your testimony relate to, and I quote your terminology, "production associates," which I take to mean workers on the floor and their supervisors and team leaders, basically. Is that correct?

Ms. INSLEY. Workers on the plant floor, sir.

Mr. LANTOS. Workers on the plant floor. What percentage of midlevel management is black at Honda of America?

Ms. INSLEY. Don, do you want to respond to that? If you can't find it handy—OK, I can respond. On our midlevel areas, we would have about 2 percent, and that would be our supervisors and administrative or assistant manager would be approximately 2 percent of that level, midlevel, would be black.

Mr. LANTOS. And what percentage of midlevel management would be women?

Ms. INSLEY. About 10 percent of our midlevel management would be women.

Mr. LANTOS. What percentage of upper-level management would be black?

Ms. INSLEY. We have one individual who is manager of associate relations and administration for our auto plant. He is responsible for over 5,000 individuals.

Mr. LANTOS. At that level, or above that level, how many individuals work for Honda of America?

Ms. INSLEY. That level or above, about 150.

Mr. LANTOS. So it would be approximately 0.67 percent of upper-level management?

Ms. INSLEY. Yes, sir.

Mr. LANTOS. What percentage of upper-level management would be made up of women?

Ms. INSLEY. From manager and above, about 7 percent.

Mr. LANTOS. What capacities would these women occupy?

Ms. INSLEY. Well, they would relate from me, senior vice president, responsible for five different areas in the company. The general counsel of our company and the senior manager of our legal

department is a female. The manager of our material service department, for example, in the Marysville auto plant, is a female.

The assistant manager of our assembly department in the Marysville auto plant, who would be responsible for about 3,000 people, is a female. They have substantive responsibilities, sir.

Mr. LANTOS. Can you describe the relative degree of job security Honda gives to its Japanese employees, including those rotated to the United States and to its United States citizen employees?

Ms. INSLEY. Sir, I guess I will try to answer you this way, and again I don't mean to try to be cute at all. We've never had a layoff at our company, sir. Everyone who has been hired at our company and remains there today has never been laid off.

Mr. LANTOS. Let me turn to Mr. Yamaguchi, if I may. Recently we learned, Mr. Yamaguchi, that Nikko in Japan provides very different treatment for big and small investors. Big investors, who lost large sums, were compensated for by the company, but I don't believe that this practice extended to small investors.

It appears to the subcommittee that United States Nikko provides different treatment for Japanese and American employees. What is your comment on our assessment?

Mr. YAMAGUCHI. Regarding the matter that took place in Tokyo, I am not in a position to discuss that. I can only say that Nikko International is not involved in that matter and that we do business here in compliance with U.S. laws and will do so.

Mr. LANTOS. We had testimony earlier today from one of your former employees, Ms. Susan Minushkin, who outlined a staggering array of discriminatory practices against U.S. citizens who work for Nikko. Under oath, do you believe that her statements were accurate?

Mr. YAMAGUCHI. I have been the president of Nikko Securities since April of this year. Regarding that case, our general counsel, sitting to my side, was in charge of that. I therefore ask Mr. Evan Stewart, general counsel for Nikko Securities, to please answer in place of me.

Mr. LANTOS. I would be happy to hear from him. Will you identify yourself, please?

Mr. STEWART. Mr. Chairman. Evan Stewart, I'm the general counsel of Nikko Securities.

Mr. LANTOS. Yes, Mr. Stewart?

Mr. STEWART. As Mr. Yamaguchi said in his oral statement, virtually every iota of what Ms. Minushkin testified to this morning was testified to in the class action suit that she brought. It was brought before the Federal judge who denied class certification in that case. We would respectfully disagree with what——

Mr. LANTOS. The question does not relate to class action. The question relates to her statements. Both she and you were sworn in, so you are both testifying under oath. You were here during her testimony?

Mr. STEWART. Yes, sir.

Mr. LANTOS. You were here during the entire period of her testimony?

Mr. STEWART. Yes, sir.

Mr. LANTOS. She made a very lengthy series of charges concerning discrimination against her by the company. Do you—you were employed at the company while she was there?

Mr. STEWART. No, I was not.

Mr. LANTOS. When were you employed by the company?

Mr. STEWART. I was hired in May 1988.

Ms. LANTOS. Have you studied her charges?

Mr. STEWART. Oh, very much so.

Mr. LANTOS. Very much so. Do you believe that those statements she made under oath were accurate or not accurate?

Mr. STEWART. I am not in a position to challenge her veracity, Mr. Chairman. All I can say is that we vigorously contested each and every allegation that she put forward in that litigation, and the matter is now settled. Again, all I can say is that we vigorously contested each and every allegation that she put forward, and they are no different than what she said today.

Mr. LANTOS. Were you here when she stated that she would have very much wanted to carry this case through the courts but, because she could not contest the enormous financial resources of Nikko Securities, being a young woman by herself, she was forced to settle?

Mr. STEWART. Your Honor, I can't speak to the financial arrangement that she reached with her attorney, who I note is present in the room today. All I can say is that she had litigated this case, along with her other two plaintiffs, for 2 years. At the conclusion of the judge's ruling on class certification, the judge had ruled that the trial would take place in another 3 months. So, virtually all of the expense and the time involved had taken place prior to and up to the point of the judge's denial of class certification.

Mr. LANTOS. Do you think there is any merit to the statement by a young woman who is confronting a financial giant such as Nikko Securities, that she is not in a position to engage in a legal battle with a huge corporate empire such as yours?

Mr. STEWART. I'm not sure I would agree that we are a huge financial empire. We are 290 employees in this country.

Mr. LANTOS. No, no. What is your total work force globally?

Mr. STEWART. I believe it's 13,000.

Mr. LANTOS. She is one.

Mr. STEWART. I understand. Speaking directly to your point, and assuming your premise, I would note that she was represented in that case by counsel that has brought on a number of lawsuits against Japanese companies. He is very well versed in this area, very skilled, and she had every opportunity through normal contingency-fee arrangements, which most plaintiffs bring these types of actions on, to pursue her suit, depending on the merit of that suit, her lawyers would be compensated at the end of it.

As you know, Mr. Chairman, probably better than I do, under title VII class action-type of litigation, successful plaintiffs get their attorneys' fees at the conclusion of the lawsuit.

Mr. LANTOS. That's right, and if they are unsuccessful, she would have been responsible for Nikko Securities legal fees, isn't that true?

Mr. STEWART. That is not correct, sir.

Mr. LANTOS. Could have been?

Mr. STEWART. No.

Mr. LANTOS. Under no circumstances?

Mr. STEWART. No. Under the terms of the settlement offer that was made—it was made under rule 68 of the Federal Rules of Civil Procedure—at most, if she had not recovered as much money as we offered through the trial process, she would have been liable, along with her coplaintiffs, for the cost—not the attorney's fees—but the cost from the date of our offer of settlement.

Rule 68 is very precise on this, Mr. Chairman, it does not allow for the recovery of attorney's fees.

Mr. LANTOS. What could have been that cost?

Mr. STEWART. Whatever the judge in the Southern District of New York assessed.

Mr. LANTOS. Give me a ballpark as to what that cost could have been.

Mr. STEWART. I am just not in a position——

Mr. LANTOS. Well, let me tell you, it was big enough to scare her out of pursuing the matter. That's how big it was. She testified under oath that she just couldn't handle it. They all felt that this was just too frightening for them to deal with a financial empire.

Mr. STEWART. We had lengthy discussions with her counsel on this, Mr. Chairman. Again, we would take a very different posture and position on that.

Mr. LANTOS. She testified that during her tenure, women were hired only as secretaries or assistants. Is that correct?

Mr. STEWART. Again, we are going outside my first-hand knowledge. I am very loathe to do that. The statistics that were before the court would refute that statement.

Mr. LANTOS. Mr. Yamaguchi testified, I believe, that between early 1988 and today, Nikko's employment decreased from 350 to 290; is that correct?

Mr. STEWART. Yes.

Mr. LANTOS. How many Americans and how many Japanese were laid off during this period?

Mr. YAMAGUCHI. I'm sorry, sir, I don't have that data.

Mr. LANTOS. I'm sorry?

Mr. YAMAGUCHI. Sorry, but I don't have that data at hand now.

Mr. LANTOS. Well, what is your estimate of the decrease in Nikko Securities' employment from 350 to 290, which is a decrease of 60 individuals? What percentage of those were Americans? What is your estimate? I understand you will submit the precise figure for the record.

Mr. YAMAGUCHI. I'm very sorry, I feel I can't make a guess at this moment. However, we eliminated the American equity trading divisions as a unit. Therefore, most of the employees of that division were Americans. Therefore, a number of Americans would have been lost.

Mr. LANTOS. Most of the employees who were fired were Americans; that is your testimony, sir?

Mr. YAMAGUCHI. I'm sorry, sir, I don't have that data.

Mr. LANTOS. I'm sorry?

Mr. YAMAGUCHI. I'm sorry, sir, I don't have that data.

Mr. STEWART. We will be happy to provide that to you.

Mr. LANTOS. Well, let me pursue that matter. Of those 60 employees who were fired, can we name any Japanese employees?

Mr. YAMAGUCHI. I was not in charge at that time so I don't know, sir.

Mr. STEWART. I would also add, Mr. Chairman, that it is not clear that all of those employees were "fired." The company has gone, as all companies on Wall Street, be they American or French or Japanese, have gone through a very difficult time the last several years.

Mr. LANTOS. I am fully aware of that.

Mr. STEWART. A number of product lines in a lot of these companies have either been downscaled or eliminated completely. We can go back and try to reconstruct, on a snapshot basis, that information for you. Our employment has fluctuated greatly since the crash of 1987.

Mr. LANTOS. I would like to ask you to submit for the record the number of American employees and the number of Japanese employees who were fired between early 1988 and today.

Mr. YAMAGUCHI. Yes, sir.

Mr. LANTOS. The Nikko statistical profile in your testimony shows only 20 percent Japanese rotating staff; is that correct?

Mr. YAMAGUCHI. Yes, sir.

Mr. LANTOS. However, when we analyze the work force without the clerical employees, who are all Americans, without any exception, we see 30 percent of the staff made up of Japanese rotators. They comprise three-fourths of the executives and 41 percent of the managers. Can you explain to us why these percentages are so high?

Mr. YAMAGUCHI. The management of the company consists of three key persons, that is: the chairman, vice chairman, and president.

Mr. LANTOS. No, those are the officers. The managers are the people who manage the company.

Mr. YAMAGUCHI. Yes. The managers are the leaders of the line of the business.

Mr. LANTOS. I'm sorry?

Mr. YAMAGUCHI. The managers are the leaders of the line of the business.

Mr. LANTOS. I'm sorry, I didn't get that.

Mr. STEWART. Perhaps you could restate your question, Mr. Chairman.

Mr. LANTOS. I'd be happy to restate my question. My statement is that rotating Japanese employees make up three-quarters of the executive staff and 41 percent of the managerial staff. Is that accurate?

Mr. YAMAGUCHI. Yes, sir.

Mr. LANTOS. It is accurate. How many of the rotating employees are women?

Mr. YAMAGUCHI. We have one woman among the rotators.

Mr. LANTOS. One woman?

Mr. YAMAGUCHI. Yes.

Mr. LANTOS. As far as the top executives are concerned, which I believe you have four, is that correct?

Mr. YAMAGUCHI. The top executives are the chairman, vice chairman, and the president. Those three have the joint responsibility for——

Mr. LANTOS. Your prepared statement says four. I don't wish to argue, but that's what your prepared statement says.

Mr. STEWART. If I could just clarify, Mr. Chairman, we are trying to present that information to you as it is provided to the EEOC.

Mr. LANTOS. Yes. That's all right. You are showing that you have 34 managers and 33 of those are males; is that correct?

Mr. STEWART. Yes, that is what our statistics show at the present time.

Mr. LANTOS. Does it pass the test of common sense that only 1 of 34 managers can be a woman on the basis of qualifications, and were you to use equal employment criteria, men are 33 times more competent to assume managerial positions than women? Or is there a systematic and deliberate discrimination against women employees, which is what the five victim witnesses testified to earlier today? I am asking you, sir.

Mr. STEWART. Again, we would take issue, respectfully, Mr. Chairman, with the premise of your question.

Mr. LANTOS. But you are not taking issue with the facts?

Mr. STEWART. The facts are the facts as we supplied them to you.

Mr. LANTOS. Thirty-four managers, of whom one is a woman?

Mr. STEWART. That is correct.

Mr. LANTOS. OK, I'd like you to explain that to me.

Mr. STEWART. That is the way the hiring has worked in our company. Those are the results of the hiring. Those are the results of the promotions. As we have made clear to the chairman and the committee with our written testimony, fully 43 percent of all promotions within the last several years have gone to women.

The company has, in fact, aggressively tried to hire and promote women. We would respectfully agree with your observation that men are not 33 times more intelligent or qualified than women to hold these positions.

Mr. LANTOS. But that's what the employment pattern shows.

Mr. STEWART. For that specific position that is correct. It is indisputable.

Mr. LANTOS. Among the executives, there are no women, as you define executives. The women's presence at the executive level is zero. The women's presence at the managerial level is 1 out of 34. This does not impress me as women having been given equal employment opportunities at your company.

Mr. STEWART. A lot of this is anecdotal, Mr. Chairman. If I may——

Mr. LANTOS. This is not anecdotal, these are statistics.

Mr. STEWART. If I may? For example, the No. 2 person in charge of our largest business division, who is a woman, recently resigned. That statistic drops out. That does not automatically change to make the 33 to 1 equal, but the fact is we can't control people who want to leave our company for whatever reason.

Mr. LANTOS. How many other women managers left during the period that the statistics refer to?

Mr. STEWART. Again, I would have to go back and put that information together.

Mr. LANTOS. You would have to go back?

Mr. STEWART. Again, patterns on Wall Street, employment have changed dramatically and are consistently changing and have since October 1987.

[The information referred to follows:]

TERMINATIONS

JANUARY, 1988 TO AUGUST, 1991

	Voluntary Resignation		Involuntary Resignation		Lay-off	
	Female	Male	Female	Male	Female	Male
W	85	76	5	22	7	27
B	9	4	2	1	1	
H	11	6	1	2		
A	48	11	1	5	4	3
Total	153	97	9	30	12	30
Grand Total		250		39		42

Rotation = 36 (Japanese Males)
Death = 3 (White Males)

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I would imagine that as bad as the work environment must be for women right now, or has been in the past for Nikko Securities, I have a feeling that it might be a pretty good time coming up, because surely you are trying to get an understanding that some of us are slightly shocked at the numbers of women, the shortage of women in these managerial positions.

Perhaps for those women who are not in managerial positions, which is all, perhaps it might be a good employment opportunity right now with your company. Would you not say that this is probably a good time right now? Are you looking to hire more women or promote more women, or are you satisfied with the status quo?

Mr. STEWART. We are never satisfied with the status quo. Let me add, though, as I mentioned in my comments a moment ago to the chairman, fully 43 percent of our promotions over the last several years have been to women within the company.

Ms. ROS-LEHTINEN. When you start with zero, I would imagine there is no place to go but up.

Mr. STEWART. Again, I respectively disagree that we were starting from zero. I would respectively submit that statistics going back to 1986 were before the Federal court, and we pointed this out in some detail to you in our written testimony, and we gave you a copy of Judge Patterson's decision, a very well respected judge in the Southern District of New York, confirmed by Congress, that he found no evidence to support the systematic or wide scale discrimination on the basis of sex, race, or national origin at Nikko. This dates back to 1986. I would respectively disagree with the premise of the question that we are starting from zero, or were starting from zero.

Ms. ROS-LEHTINEN. Does Nikko Securities have any program to actively recruit women and minorities? If you have such a program, at what level of responsibility is that person who is in charge of this recruitment program?

Mr. STEWART. We provided you with our affirmative action policies, which again, are in our written statement. Again, as we stated in our written statement, that is the duty of our personnel director.

Ms. ROS-LEHTINEN. But does Nikko Securities have an actual program or recruitment program? For example, many of the Federal agencies, FBI, whatever kind of agency, they actually have a recruitment program. Many times they may not be totally successful, but at least it looks like there is a real attempt, a real program in place to actively recruit women and minorities for managerial positions, or entry level, any sort of positions.

I'm wondering, outside of your personnel documents and your affirmative action plan on paper, if you have an actual recruitment plan. Is anyone in charge of actually going to different places and recruiting women and minorities for managerial positions?

Mr. STEWART. More specifically than what is identified in our written statement, no.

Ms. ROS-LEHTINEN. Do you see that there is a need, perhaps, for such a program to be put into place at Nikko Securities, or not?

Mr. STEWART. Separate and apart from what we have? I'm really not professionally qualified to speak on that. I think our personnel director is probably better qualified to speak to that issue.

Ms. ROS-LEHTINEN. What program is in place now? For example, I'm a woman, I wish to get hired. Perhaps not at an entry level, whatever that may be, but I would like to be on a track to somehow be in a management position with Nikko Securities. How would I find out about you? Would I have to look in the paper, or do you have some kind of program where you would be looking for someone like me?

Mr. STEWART. If I may, Madam Congressperson, our personnel director is not here with us today. We were told that he would not be allowed to testify, so I'm really not in a position to comment specifically on items which really are sort of outside my purview. I think we are getting a little bit out there.

Ms. ROS-LEHTINEN. So you say that your company has an official policy against workplace discrimination as you set forth in documents?

Mr. STEWART. Absolutely.

Ms. ROS-LEHTINEN. And that official policy states that you do not discriminate on the basis of sex or national origin? That would be one of the classifications as well?

Mr. STEWART. Absolutely.

Ms. ROS-LEHTINEN. And all the other normal classifications. When you hire someone, when you hire an employee, the process that you follow, would you say that it is more or less the same type of process that is used by American companies; the same sort of forms, the same sort of requirements, the same sort of factors that any other company would be looking for, for an employee?

Mr. STEWART. Absolutely.

Ms. ROS-LEHTINEN. The discrimination charges that have been filed against your company—I realize that we have been paying more attention to one particular charge. What about other charges which have been made, other complaints which have been made against your company? First, I'll start with a normal company procedure for grievances.

If I were to perceive, as an employee of your company, that I had been discriminated against, what in-house procedures are in place in order to voice my displeasure at my perceived discrimination, and what actions are taken about my complaint by your company?

Mr. STEWART. Again, I would remind you, respectfully, that we are a very, very small company. A lot of companies that have separate grievance procedures tend to be companies that are very, very large, with thousands and thousands of employees; we have 290.

With that as the context, we don't have a specific, set-aside grievance alternative dispute resolution-type of process. That's what we hire our personnel director to do. He is a very qualified, able person and is doing the job splendidly as far as I know.

Ms. ROS-LEHTINEN. So I would go to the personnel director with my grievance?

Mr. STEWART. And your manager.

Ms. ROS-LEHTINEN. And my manager?

Mr. STEWART. Yes.

Ms. ROS-LEHTINEN. And of the discrimination complaints which have been officially filed against Nikko Securities, how many have there been? What has been the resolution of those complaints? Do you have any breakdown as to what—the majority of charges deal with termination, deal with sexual discrimination, deal with—at which point in the employment, and also because of what perceived discrimination?

Mr. STEWART. I assume you are not speaking as to all litigation, but only of the EEO variety; is that correct?

Ms. ROS-LEHTINEN. Perhaps, if the EEOC is the only place where they would be going to, but I don't wish to take that as a given. Perhaps there is another agency which they would go to file their complaints.

But of all the complaints dealing with on-the-job discrimination which have been filed with various agencies, be they State or local or Federal, how many would you say, a ballpark figure, have been filed against your company? Of those which have been filed, what do they deal with?

Mr. STEWART. I'm aware of only two others for the entire history of our company in this country. One involved an age discrimination claim, which was dismissed by the EEOC in its entirety. The second was one brought in front of the EEOC counterpart in New York State, with respect to the interpretation of our maternity policy. That matter was conciliated very early on.

Ms. ROS-LEHTINEN. So, with the exception of the one that we heard today, there have been two others?

Mr. STEWART. Yes, in the roughly 30 years this company has been in this country.

Ms. ROS-LEHTINEN. Thank you very much.

Mr. LANTOS. Congressman Shays.

Mr. SHAYS. Thank you, Mr. Chairman. Mr. Amino, we did not have any testimony today that Honda discriminates against its employees. Your statistics are rather impressive, frankly, in terms of the number of minorities and so on that work for your company.

I plead to you tremendous ignorance about the Japanese culture, but it has been accepted in my own mind that the Japanese have a different view of women than we may have in the American society. I guess what I want to ask you is, do you have any laws in Japan that require you to provide equal treatment with sexes? You are a more homogeneous society, so you don't deal with some of the other issues that we deal with in the United States, but do you have laws similar to ours in Japan?

Mr. AMINO. To my best knowledge, yes. In Japan we have a similar kind of law in terms of the equal employment opportunity. However, I don't know the details because I have spent the last 15 years in the United States. So I don't have a detailed knowledge about changes since I left Japan, but I think we do have.

Back to your first comment, I think, even though we have a law, I do believe that the contents of the law itself are different and a reflection of the Japanese culture, maybe.

Mr. SHAYS. Maybe it's the Peace Corps in me, but I have always felt that citizens that go to another country need very much to acquaint themselves with the ways of that country. I guess what I'm interested in is maybe you could share with us some of the tensions

that you think may exist in a Japanese culture versus the United States culture, dealing with fair labor practice issues like the hiring of women or the hiring of blacks, and so on.

Mr. AMINO. I think whenever you go to other countries, the first priority is to understand the law in the particular country. Not only the law itself, but we need to understand the spirit of the law, which I think is a reflection of the culture. Of course, we have, as Japanese, we are very much influenced by the Japanese culture, but I think there is no excuse to use cultural background in terms of violating the law of the country.

We have to be very cautious to be aware of what the difference is between the Japanese culture and the American culture, and how the American culture reflects the spirit of the law and law itself. To be honest with you, even though we believe that the first priority is to respect the law, it's not an easy job for someone who comes from another country.

The best thing is that, as I say, we have an American colleagues, and we have had extensive discussions about the difference, and try to make sure that we Japanese share the same feelings as our American colleagues. I hope this is the answer for your question.

Mr. SHAYS. It's helpful to know how you think, and I appreciate that. Let me ask you, though, the law that you have in Japan, would there be any penalties if you discriminated against a woman in Japan? I realize you haven't been in the country in about 15 years.

Mr. AMINO. I believe so. In any kind of law, you know, you violate the law and there is a penalty, but I cannot tell you.

Mr. SHAYS. Let me just be very candid about this. Is it not true that our laws are stricter here than in Japan?

Mr. AMINO. Your question is——

Mr. SHAYS. Is it not a fact that our laws are a lot stronger in the United States prohibiting employers from discriminating against their employees based on race, sex, and so on?

Mr. AMINO. It might be fair to state that the law in the United States is more strict compared to the law in Japan, reflecting, particularly in the United States, I think reflecting the specific situation in the United States.

Mr. SHAYS. You have no doubt in your own mind that the law you have to live by is the law that's in this country?

Mr. AMINO. I don't. I respect the law.

Mr. SHAYS. Let me ask you, Mr. Yamaguchi—let me just say to start with, that when we talk about discrimination I always think about my own chart. What would my own office look like, my own employees. We do pretty well in terms of women for the most part. My executive, my AA is a woman. But I don't have as large a number of minorities in my office as I would like. And yet look at your chart on your statement on page 6.

Let me ask you. What should impress me about this chart that says to me that your company is making a good-faith effort to hire women and minorities? Where should I find encouragement in this profile of your statistics? Is there anything that is encouraging in this statistic?

Mr. STEWART. Perhaps I could help Mr. Yamaguchi, Mr. Shays?

Mr. SHAYS. Sure.

Mr. STEWART. I think we would look, recognizing what the Chairman has already pointed out as statistical facts, what we would highlight for the committee, as we have done in our written testimony, is the large number of Americans in key positions. We also point out, with respect to the professional positions, 28 women are in those positions.

Mr. SHAYS. Identify, please, in the chart, the 28 women that you call "key" positions?

Mr. STEWART. All of those are key positions.

Mr. SHAYS. The manager or the professional.

Mr. STEWART. Yes.

Mr. SHAYS. I look at executive, I look at manager, then I come to professional. How do you define professional, I'm sorry?

Mr. STEWART. Professional, for example, in a securities company, would include those who have major trading responsibilities.

Mr. SHAYS. So they are basically sales people in your office?

Mr. STEWART. Yes.

Mr. SHAYS. They're not——

Mr. STEWART. Those who have officer titles, for example.

Mr. SHAYS. But of your executives and of your managers, you have 34, and 1 would be a woman.

Mr. STEWART. At present, yes. As I mentioned before, we have recently lost the highest ranking female officer.

Mr. SHAYS. I know, but that answer was embarrassing because, really, I mean if you lost one or two, it still wouldn't be impressive.

Mr. STEWART. From a statistical standpoint I understand that.

Mr. SHAYS. What other standpoint is there? I'm looking at the statistics. I guess it just leads me to my next question. It would seem to substantiate the feeling that there is discrimination in your company as it relates to women, on the surface. Given that just one, and maybe you had another, out of 34 people, 2 were, in fact, women. You almost have to work hard to have that happen it seems to me. Do you have any comment to that?

Mr. STEWART. Again, we would respectively disagree. Again, virtually the same statistics were before the court on——

Mr. SHAYS. Don't tell me what the court was. Let me ask you this. I guess what would be helpful, maybe I could just say this to the staff. What would be helpful for our next hearing would be to compare other security firms. That would really be what would be of interest. I mean, just to—and very candidly, if, in fact they don't measure up, and I would be surprised if they did, it would seem to me that you would be working overtime, not to have a specific number, but to certainly have more than what we see here.

Mr. STEWART. If I could, Congressman Shays, in fact, that type of anecdotal/statistical evidence as to what Wall Street generally does in this area was, in fact, presented before the court, and Nikko was basically in the mainstream of those statistics.

Mr. SHAYS. You are under oath now, so I have to take your word for it, but are you really comfortable saying that—you can be comfortable saying the courts looked at it, but are you comfortable in saying that this was typical of other firms?

Mr. STEWART. All I can tell you is that the plaintiffs very vigorously pressed exactly the point you are making here, and all that

evidence was before the court. The Federal judge did not accept what I think was the premise of your question.

Mr. SHAYS. That would be a class action suit.

Mr. STEWART. Yes. That there was systematic, statistically provable discrimination within our company. The court specifically rejected that.

Mr. SHAYS. I would like to just ask what effort is being made, in concluding, to hire more women?

Mr. STEWART. I think we are making every possible effort to do that, recognizing what your colleague directly before you suggested, that we should be sensitive to this, as we are. We are here in front of you because this is a very hot topic. It's often written about.

Mr. SHAYS. That's not really what I asked. In fairness to the question, I really wanted to know, specifically, what steps are you taking?

Mr. STEWART. As I mentioned in response to your colleague's question, we don't have a specific separate affirmative action program outside of our general affirmative action program which has existed for a number of years.

Mr. SHAYS. I feel like we're getting deeper in a hole here. What is the general affirmative action that would recognize that you have very few women and would go out and seek them? What——

Mr. STEWART. We recognize that this is an issue that Japanese-affiliated companies have some sensitivity to. Witnesses that were here today, and we are making every effort through the hiring process and promotion process to bring in Americans and women into qualified positions. We honestly are trying to do that very vigorously.

Mr. SHAYS. Let me just conclude, if I might, with one last question. Obviously, we welcome foreign investment in this country, and we are very grateful to see American workers hired. What obligation is there on the part of foreign companies, Japanese or other, to hire Americans in very key positions? How do you, Mr. Amino, how would you describe the importance of that?

Mr. AMINO. What we are striving is to, as partially described here in my testimony, we are trying very hard to promote the American colleagues. One of the things we started recently is we started implementation of the so-called North American Production Task Group. That means we are sending our American associates to Japan; hopefully we will increase the number of associates to 50 or 60. In the long range, we are certain that those people will come back and take a leadership role.

We are sure that those kinds of process will help us to see that more and more American associates take higher positions, responsible positions. I can tell you that we have a definite trend. We think it is one of the obligations, as a Japanese colleague working at Honda of America, to help them to grow.

Mr. SHAYS. Thank you, yes. Mr. Yamaguchi, let me define the question more narrowly. Do you have a program of hiring Americans and bringing them to Japan to integrate them with your company, and then have them come back? If so, can you describe to me that program?

Do you understand the question I am asking? In other words, the question I am asking you sir, is: Do you hire Americans to work in Japan as a program to help integrate them into your company?

Mr. YAMAGUCHI. Yes. Many American employees have gone to Nikko Tokyo for training. For example, Nikko paid for Ms. Minushkin to go to Nikko Tokyo for a 3-week training program in May 1986. That type of experience, rather than a formal rotating program, is the norm.

Mr. SHAYS. Let me just conclude then. Either gentleman, is it possible to give me an idea of the number of employees that you would bring over in the course of a year to Japan, for more than just a week's time?

Mr. STEWART. Again, we're getting a little bit into the personnel office of the firm, but based on the last 5 years, I would guess that a very, very large portion of our American professional staff has spent a significant amount of time being trained in Japan.

Mr. SHAYS. What does significant mean?

Mr. STEWART. I would say at least 50 percent of those folks.

Mr. SHAYS. Fifty percent of the employees, but how much time; a week, 2 weeks?

Mr. STEWART. Usually 3 or 4 weeks. It's a very intensive, around-the-clock type of training program.

Mr. SHAYS. Thank you, Mr. Chairman. Thank you, gentlemen.

Mr. LANTOS. Thank you.

Congressman Hobson.

Mr. HOBSON. Thank you, Mr. Chairman. Just very briefly, what is Scott Whitlock's position?

Mr. AMINO. Scott Whitlock is one of the executive vice presidents.

Mr. HOBSON. Along with yourself?

Mr. AMINO. Yes, my colleague. Yes.

Mr. HOBSON. Is he on the same level as you, the same authority?

Mr. AMINO. Yes.

Mr. HOBSON. Susan, how many people in North America, in competitive motor car companies, are there like you? Well, nobody could be like you; maybe that's unfair.

Mr. LANTOS. Your objectivity, Congressman Hobson, is overwhelming.

Mr. HOBSON. I've known Susan a long time. Does Ford have a senior vice president? Does Chrysler? Does GM?

Ms. INSLEY. I don't think so.

Mr. HOBSON. I would hope—the other comment I'd like to make is that I notice that 2 percent. I'd like to see that higher. I think we've discussed that before, but I do think that when you were forced to recognize—I don't think you were forced, but as I got in there at some point before it all came out, and I didn't know what was going on——

Ms. INSLEY. You have focused our attention.

Mr. HOBSON. Once your attention was focused, I think you began to move in the right way, and I would hope that you would continue that in the upward mobility of people, and I think, from the past, in talking with the managers, both American and Japanese managers, you understand that.

The one thing I think I would like you—if I may, Mr. Chairman—to explain, and I have a business associate whose daughter happens to work in this plant, so I get some feedback other ways, and there are a number of my constituents who work in this plant over the years.

I really wish you would explain—I don't know how it works. I don't think I could wear one of those little white suits and be in the atmosphere, but obviously there is a difference between other plants that I have been in that are production, automotive-type facilities and yours. The way you talk about your people and work with your people is different. As I understand from talking to some other people, it's caused some changes.

You used the term deliberately, I think, "associates," as opposed to laborers. I don't care, Don, if you want to explain it or Susan, or Mr. Amino. What is that concept and how does it work? How does it work in your plant?

Mr. AMINO. Ladies first.

Ms. INSLEY. OK. Congressman, this would be my reaction to the chairman and members of the committee. In my now over 6 years at Honda of America, what I find, perhaps as cliche as it might sound, is a pretty sincere respect for the individual and the human being and all the power that can be unleashed when you tap into that resource.

If you can avoid the barriers to communication, if you can avoid the barriers that would come from good and honest and open discussion, whether it's American to American or American to Japanese, you will tend to grow and develop. From that will come some strength and competitiveness. That is my belief in my 6 years at the company.

Sure, there are outward signs of whatever title we may have or uniform that we wear, or some of those things that are somewhat tangible evidence, but there is an intangible sort of spirit, if you will, that basically I think just simply begins with respect for the human being.

Mr. HOBSON. If I may. I knew you as an employee here in Congress and then as a lawyer. When you go to Honda, do you have a special parking spot?

Ms. INSLEY. No.

Mr. HOBSON. How do you dress when you are at Honda?

Ms. INSLEY. A lot more comfortably than I am today. We wear a uniform. It's a white shirt and pants.

Mr. HOBSON. You're a lawyer?

Ms. INSLEY. Everybody has a uniform, I guess, of different types. That's what we wear.

Mr. AMINO. In addition to Susan's comments I would like to add, as Congressman Hobson talks about the uniform. Not only the uniform, but we try to implement many different ways such as no parking, common cafeteria, those kind of things, because we think that you need various types of avenues by which you strengthen the togetherness between American/American and Japanese/Japanese, American/Japanese.

From time to time we feel that we are successful. I think we are trying. We are pleased with what we are doing now.

Mr. HOBSON. If I may, Mr. Chairman, then I'll wind up.

I can tell you that another company in my district that is not Japanese is now thinking about some uniforms and some nonparking spaces as a result of touring your operations.

I should also say that one of the biggest problems that I have in my district now, Mr. Chairman, is the traffic problem in that Honda likes to have their people at work on time, and they apparently give bonus points for getting there on time, and we are having a lot of traffic accidents because people are trying to get to work, so we have to build some more roads.

I've been in the markup session with the Transportation Committee. I very much appreciate your indulgence. We've tried to work with Honda. I appreciate their candidness. A couple of times when I've gone in they've been willing to take—even before I became a Congressman—my comments to heart. They have not always—once since I've been a Congressman, over the participation of their country in—I spoke to all of the management there at Susan's—I might say encouragement, as to their involvement. I can say that 4 days later, I don't think it was the result of me, but $4 billion more came forth.

There has been that frankness between us which I think is very important, and I hope everyone can do that in the future. I would just like to end up by saying again I would like to see that 2 percent moving forward, and I hope you keep hiring people from Springfield, and I can win you away from Clements, unless my district moves that way in the future. Thank you, Mr. Chairman.

Mr. LANTOS. Thank you, very much. We have solved the speeding problem for Domino's Pizza, so we are ready to assist Honda in that effort.

Let me thank all of you for coming. Let me just say very briefly what I said at the outset. We are very pleased having Japanese investment in the United States because it is beneficial for both the United States and Japan. We are not asking for Japanese companies to do anything we don't ask our own companies to do, but we insist that they, in fact, do what our own companies do.

With respect to Japan, I think the particular problem seems to be at the managerial and the executive level. We feel that American citizens should not be discriminated against in managerial and executive positions by Japanese firms working in the United States, who have the privilege of working in the United States.

We are very anxious to see to it that minorities of all types be given an equal opportunity. We are extremely anxious to see to it that women have an opportunity to rise, in appropriate numbers, to positions of responsibility for which they are qualified. This subcommittee will not rest until that will be the state of affairs in all Japanese-owned and other foreign-owned enterprises in the United States. We want to thank all of you.

Our final witness today is Mr. Lewis Steel, attorney, from New York City, and Mr. Ronald Morse, executive vice president, Economic Strategy Institute, visiting scholar at the Wilson Center of the Smithsonian.

[Witnesses sworn.]

Mr. LANTOS. We are pleased to have both of you gentlemen. Your prepared statements will be entered in the record in their entirety.

Mr. Steel, you may proceed any way you choose.

STATEMENT OF LEWIS STEEL, ATTORNEY, NEW YORK CITY

Mr. STEEL. Thank you, Mr. Chairman. I would like to spend a little time picking up on some of the points that some of the other witnesses have made. I do this, as I think I pointed out in my written statement, from having participated in quite a few cases that were basically of the white-collar type, not the production type such as the Honda situation.

I'm really talking about cases that involve office workers, trading companies, for example, banks, companies like that, that employ many white-collar type of people. First of all, there has been quite a bit of testimony here concerning statistical studies. There is a real problem with what the EEOC has been doing with regard to its statistics.

I heard the EEOC representatives candidly admit that, and I think they really have to be pressed on that. The EEO-1 reports that they get in from employers, simply do not do the job. They don't do the job for at least two reasons, that I can put my finger on very quickly.

No. 1, many of the companies—again, I'm only talking about my own anecdotal experience, what I happen to have seen over the years litigating in this field. Many of the companies literally do not list on their EEO-1's their Japanese rotating staffs, even though those people are, by every criteria, American employees while they are here in the United States.

If you have a statistical document from the EEOC that leaves off all of the Japanese men, you've got nothing. You can't compare it to anything, and if you ask the EEOC to do statistical studies for you, obviously those studies are not going to tell you what you want to know. They are not going to be based on the right figures. Those EEO-1's have to be meaningful; it's got to be absolutely clear that all employees must be listed on the EEO-1's.

Second, the EEO-1's are broken down into various categories of employees. The category of employee that we are focusing on here today is officials and managers. If there is no meaningful definition of what an official and manager is, then what you find, and what we found in our work, is that you see EEO-1's filed with many people listed as officials and managers, often by the way women and minorities, who, by no measurable standard, are officials and managers.

So it's the same problem that you were just talking about. You see people with titles or something, who are called officials and managers, who, if you really look at what they are doing, they are perhaps first-level supervisors. When you lump that first-level supervisor into your statistics with the chair of the company, you get something that has no meaning whatsoever.

You can ask the EEOC to do all the statistical studies you want to ask them to do, but until they get their house in order to obtain proper statistics, what you have is nothing. I think you have to focus on that. The EEOC hasn't begun to do the job in terms of collecting statistics in order to give you something, give us all something that has any meaning. I would suggest that we start from there.

Second of all, I don't think the issue here is whether or not you have a box on an EEO-1 form that has to be checked off, another box on the form. I don't think that's the problem. Again, I think the problem is accurate statistics. If the statistics are accurate, then both the EEOC can deal with them, Congress can deal with them, and lawyers can deal with them. We should focus on, it seems to me, what is critically important in terms of law enforcement.

The other point that you hear very clearly, I think you all heard it and you've all commented on it, is the fact that the victims are really scared away from the process because it's overwhelming to them. First of all, it's overwhelming to them because the laws are nowhere near strong enough. They just don't do the job.

As the chair of the EEOC said, if aggravated discrimination was a capital crime, you'd find very little aggravated discrimination, very little systematic aggravated discrimination. I'm not advocating that. What I'm suggesting is that short of criminalizing aggravated discrimination—and by the way we've criminalized all sorts of conduct. Antitrust violations, for example, if aggravated is criminalized.

Assuming that we are not going to do that, and realistically I don't this country is going to do that, what then can we do? We can certainly have remedies that will make employers think twice before they discriminate. Some of them are just obvious and some of them Congress has been trying to pass a bill on for a while, and hopefully is going to be able to do that.

No. 1, an employee who has been discriminated on the basis of race, sex, national origin absolutely has suffered enormous pain and suffering. Can you imagine being trapped in a job for 6 years not knowing whether to stay, not knowing whether to get out, wondering who you are, are you really any good, all the things you go through.

In this area of the law an employee does not get 1 cent for pain and suffering, when that employee files a lawsuit under Federal law. What we are talking about are backpay remedies. It is ridiculous and it does not lead to enforcement of these laws. On a higher level, when you have aggravated employment discrimination, there is no reason whatsoever why there should not be punitive damages for that situation.

I think you all know that the *Patterson* decision of the Supreme Court has thrown an absolute road block into that area of enforcement, and something really must be done about it if we are going to get moving in this area. What is obviously clear is that the civil rights laws of this country affect everyone. Sometimes the way they are presented to the general public, they appear very often only to involve race.

So in this country, very often when I hear discussions on civil rights law and I hear the posturing that goes on very often in this city and in these buildings that are surrounding this hearing, it appears that you are talking about something that is racial. The fact is that the civil rights laws of the United States protect all Americans.

You can't see that more clearly than you see it in these cases. All Americans need the protection of strong civil rights laws;

women need them, white males need them, African-Americans need them, Latinos need them, everyone needs them, and they need them now.

There has been a question raised on the Nikko case about whether it went forward or should have gone forward as a class action. I don't wish to use your time—I don't think it's productive to relitigate that case, but all I can tell you is that in the area of class action law, the same thing is happening as has been happening in all of civil rights law.

The Federal court decisions have kept coming down narrowing and narrowing and narrowing what plaintiffs' lawyers can do and when classes will be certified. In a case like Nikko, for example, you have, in my opinion, an absurdity that the court relied on the fact that women who presently work for Nikko and, therefore, were under the control of the Nikko managers, submitted affidavits saying they didn't want any part of the lawsuit.

Who's kidding anyone? That type of conservative decision, which is part of the pattern in civil rights decisions, keeps making it more and more difficult for small private law firms like mine to play any meaningful role in enforcing the civil rights laws, and perhaps 1 day Congress is going to have to deal with that, the question of class actions.

But Congress doesn't deal with the civil rights law, what does that mean? It means that the EEOC, which is the primary law enforcement agency the civil rights laws in this country, must do its job. You have the situation that the EEOC investigations of some of the cases of which this committee is aware, have been, in my opinion, absurd. For example, in the *C. Itoh* case you had sworn statements from women that they were told that they couldn't go anywhere in that company because they were women, and you didn't even have sworn denials from the company.

What did the EEOC do? It found no probable cause. Absurd. That's what we are facing here today. I understand the EEOC is overwhelmed with its case load, but something as basic as that should not happen.

In another case, which I have mentioned in my written statement, the Sanwa case, you had five women coming in to the EEOC office in New York saying, "Look at our situation. You've got to look at all of our situations together." The EEOC said, "No, no, no, we'll let the company pick you apart one at a time. If they come up with any kind of explanations on what happened to each one of you separately, no probable cause."

Three years after the investigation begins, you get a no probable cause finding. That's on appeal right now to the EEOC office in Washington. That's the type of thing that we are facing now, and you don't get civil rights enforcement from that type of agency action.

I know the EEOC needs money, but the situation as it exists now makes it almost impossible for there to be meaningful law enforcement with regard to Japanese companies, with regard to American companies, and with regard to companies of other foreign nationalities.

There is also the question in these cases, it seems to me, and again, I dealt with quite a few cases involving American subsidiar-

ies of Japanese companies. I've been told—and I have no reason to disbelieve it—that other American subsidiaries of foreign companies also engage in various forms of illegal employment discrimination. I've been told also that the direction of that discrimination invariably impacts very heavily on women.

Again, it seems to me that one of the agencies of the U.S. Government that could do something about how American subsidiaries—and they were American companies—American subsidiaries of foreign companies, function in this country, is the Immigration and Naturalization Service. There is no reason, for that agency not to do its job of determining, before it allows people to be in this country as long-term employees, to insure that INS regulations are met that insure that those employees are going to do a necessary job of the type that it would be most difficult to find locals to do. The INS should do its job in this area. It seems to me that that would make a major impact.

With regard to the OFCCP, the OFCCP, from what I know of it, works with the figures it gets from affirmative action plans. Once again, those figures, in my experience, simply bear no relationship to reality. Once again you have the problem of when somebody is listed as an official and manager, is that person really an official and manager?

I'm told that where you have rotating staffs, often they do not appear on those OFCCP statistics. And so, therefore, anything that that agency has before it simply is not relevant to the job of determining what is going on.

One of the things obviously that can be done in this area of the law, is that when the various governmental agencies see that there are extraordinarily high percentages of foreign workers coming in to work in American subsidiaries of foreign corporations; be they Japanese, German, French, Dutch, from any country, it seems to me that that should send up some kind of signal that some Federal agency should be taking a look at why those numbers are so high.

The reason for that is obvious. You can manage and run a company, as apparently Honda does, using large American staffs. The question must be answered when you see abnormally high numbers of people in this category coming in: Why isn't somebody taking a look at that?

I suggest that these are fertile areas for this committee to deal with, for the EEOC to deal with, for other Federal agencies to deal with, so that we can get off the dime and start enforcing our civil rights laws. Thank you very much.

Mr. LANTOS. Thank you very much Mr. Steel. Your statement will be entered in the record.

[The prepared statement of Mr. Steel follows:]

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July 17, 1991

Hon. Tom Lantos
Chair
Employment & Housing Subcommittee
of the Committee on Government Operations
Rayburn House Office Building, Room B-349-A
Washington, D.C. 20515

Dear Congressman Lantos:

Please accept the following statement to complement my oral testimony which is scheduled before the Employment & Housing Subcommittee of the Committee on Government Operations on July 23, 1991. I understand that the subject matter of this hearing is to examine employment discrimination by Japanese owned companies in the United States.

I have been practicing civil rights law since 1964, when I joined the legal staff of the National Association for the Advancement of Colored People which was then under the direction of the Hon. Robert L. Carter, now a senior Judge of the United States District Court for the Southern District of New York. Since 1968, I have been in private practice and have been actively litigating employment discrimination matters against American subsidiaries of Japanese owned companies in the United States, among others, since 1976. I was lead counsel in Avagliano v.

Sumitomo Shoji America, Inc., 457 U.S. 176 (1982), the case which established that American subsidiaries of Japanese corporations are fully subject to United States civil rights laws. In that case, the United States Supreme Court rejected Sumitomo's argument that it was protected under a Treaty of Friendship, Commerce and Navigation between the United States and Japan from American anti-discrimination laws. The Sumitomo case was certified as a national class action in 1984 and settled in 1987. My firm, Steel Bellman & Ritz, P.C., and its predecessor firms, has handled a series of other cases against other American subsidiaries of Japanese corporations, including Duffy v. C. Itoh America, Inc., which was certified as a class action in 1990, and Ross v. The Nikko Securities Co. International, Inc., in which a district judge denied class certification in 1990 and thereafter the matter was settled as an individual case. The firm also has settled numerous individual cases against other American subsidiaries of Japanese corporations. Additionally, we have settled cases against branches of Japanese corporations functioning in the United States.

I wish to stress at the outset that my firm has handled many employment discrimination matters against American corporations that have no foreign parent, as well as matters involving American subsidiaries of corporations incorporated in other countries than Japan. As civil rights lawyers, the attorneys in my firm have seen companies incorporated in the United States, with or without foreign parent corporations, practice employment discrimination. We believe that employment discrimination is

equally reprehensible whether practiced by American companies, American subsidiaries of Japanese companies, Japanese branches, or American subsidiaries of corporations incorporated in other countries or branches of foreign corporations from other countries.

I would also like to note that my familiarity with American subsidiaries of Japanese companies and Japanese branches is largely limited to companies which employ large numbers of professionals and white collar workers rather than companies involving factory or assembly line work, such as the Japanese automobile companies functioning in the United States.

Moreover, a large number of our cases have been brought by women who have claimed that sex discrimination, as well national origin discrimination, presents a major obstacle to their ability to obtain fair treatment and advancement. Many of our clients in this category have been women with a college education or higher, who have found themselves trapped in basically clerical or administrative positions at Japanese companies. By contrast, American men with similar educational backgrounds, have done somewhat better, although they, too, have found themselves placed in positions where virtually all authority has been held in the hands of male employees who rotate to the U.S. subsidiaries from the Japanese parent companies. These rotating staff typically stay at the American subsidiary for tours of three to six years.

In other words, the companies which we have dealt with practice discrimination in a three tiered structure in which rotating staff employees from the Japanese parent hold many of

the managerial jobs, even down to the very lowest level of management. When they delegate even the most minimal authority to local employees or place local employees in positions where they can make reasonably good salaries or commissions, almost invariably these employees are men. At the bottom of the three tiered structure are women, many of whom learn very quickly that their jobs are deadend. Thus, many of the most educated women quickly see that they have no future with these commpanies and leave, creating a very high turnover.

Many of the companies we have dealt with have very high percentages of Japanese employees from the parent company. Thus, it is not unusual for us to find that 30-40% of the total work force of such companies is from Japan. This means that the Japanese parent corporations are sending over employees to occupy even the lowest level of management. Often, these lower, as well as some middle level Japanese employees are in the United States, not to play a meaningful role in the direction of the business, but to familiarize themselves with American business practices and receive training.

Many of these Japanese employees come to the United States after following a well established career path in Japan. Most, immediately upon graduation from college in Japan, join the parent company with the expectation of lifetime employment. At the time they join their companies, they have little or no specialized training. At their corporations, they are members of the class of the year in which they entered. Typically, they go through a rigorous training period and are assigned to a particu-

lar area of their company's business. At some of the companies, the employees move from department to department, but at many companies they stay in the department of their original assignment. Until recently, all or virtually all of the employees at these corporations who were on upwardly mobile tracks which could lead to advancement were men. In fact, these personnel are virtually always called "salary men" in Japan. Now, I am informed that a few of these companies have a very few women who theoretically are functioning in areas where they can have upward mobility like the men. Virtually all the rotating staff employees who come to America, however, are men.

According to the evidence available to me, local men who are hired by these subsidiary companies in the United States usually are sought out to fill particular job slots which the company needs an employee at a particular point in time. For example, a Japanese trading company wants to break into a particular field in the United States such as specialty chemicals. They have no one in Japan who can operate as a salesman or trader in that area, so they look for an American with contacts in the field they can hire. Typically, that local man, once hired, will play an extremely limited role in the company, functioning only in the particular area that he was hired for. If business in that area prospers, then perhaps that man will have a reasonable future with the company in that specialized area. But, he rarely becomes a part of the management and is virtually always isolated from the company's decision making process. If the business does not work out, the Japanese company will terminate him rather than

transferring him to another area of the company's business where his skills as a salesperson could be utilized. Moreover, there is little chance that this local male will be trained or groomed to play a greater role in the company. Essentially, his activities will be limited to the original area of his expertise. Moreover, often all his business transactions will be subject to approval, if only paper approval, by a Japanese employee, even if the latter has little or no knowledge about the area of business activity in question. Sometimes, a Japanese staff employee may travel with this local employee on his business trips and learn his contacts and methods. In that event, if business turns down, it can be anticipated that the Japanese employee will retain his job and the American will be terminated.

Women rarely, if ever, function at Japanese corporations at even this level, but are expected instead to provide the backup services for both Japanese staff and the local men. In our interviews with women, we have been repeatedly told that sometimes a woman will play an important role in a start-up situation for an American subsidiary of a Japanese company. If, however, the subsidiary prospers and expands, that woman may well find herself replaced by a Japanese man from the parent company and relegated to a glorified secretarial role in which she is expected to train her Japanese supervisor as well as his successors.

Additionally, many women perform important aspects of the functions of new Japanese staff employees who are too inexperienced to function in the United States. We have seen evidence that some of these women actually negotiate the trans-

actions for which the Japanese men are responsible. Yet, these women generally are referred to as secretaries and are paid as such. Sometimes, certain Japanese staff employees actually encourage women to play responsible roles. Because these women are not publicly recognized by the company for their actual work or given appropriate job titles or pay, they often find themselves relegated to clerical work at a later point in time when their immediate Japanese superior is rotated back to the parent company and replaced by a new rotating staff employee who has no interest in seeing a woman perform responsible work. When this happens, there is no way for the woman to appeal her misfortune to higher authorities. Generally, she may stay with the company, receive her yearly wage increases and do whatever is assigned to her, or leave.

Recently, the lawyers in my firm have been noticing that the Japanese companies have been hiring more and more Asian-born women. These employees appear to come from many countries, including Japan, China, Korea and the Phillipines. It is our belief that they are being hired because the hierarchy in the Japanese controlled firms believes that they are much less likely to protest their treatment than women whose roots are American. Moreover, to our observation, the Japanese controlled firms appear to hire virtually no African-Americans or Latinos in positions that are upwardly mobile.

The Japanese companies with which we are familiar universally hire low level employees, including minority employees, through employment agencies. Often, they hire higher level local

employees through personal contacts, recruiters or through other sources which are not open to the general public. By one means or another, however, these companies appear to have avoided being challenged for their racial practices.

You have asked me to comment on the responses of management when charges of illegal discrimination are brought. I would like to start with a discussion of the Sumitomo case. After resisting the charges of discrimination for many years, the Sumitomo Corp. of America management (the name was changed from Sumitomo Shoji America) entered into a far-reaching settlement agreement in 1987. That agreement in many ways Americanized Sumitomo's employment practices to make them more objective. For example, a major outside consultant was employed to study the various jobs at this trading company, determine the most important functions of the jobs and develop job descriptions, job ladders and necessary qualifications for various jobs. Women were informed as to what their new job titles and descriptions would be and how they could advance. The decree also allocated $1 million for the training of female employees, which was a significant amount considering the relatively small size of the workforce. The settlement decree also contained employment goals for women which the company was supposed to attempt to meet in good faith during the three year life of the decree.

My firm was given the function of monitoring and enforcing the decree over the three year period and to report to the court at the end whether or not Sumitomo had complied with its terms. At the end of the decree, this firm reported to the court that it

believed real progress had been made at Sumitomo and that women had received significant training and had moved into new areas at the company, including holding responsible sales related positions. That is not to say that we believe that at the end of the three year period all problems of sex discrimination had ceased to exist at Sumitomo, but women were no longer trapped as clerical or administrative employees and an objective system had been set up which allowed for advancement and gave women the ability to gauge their own progress. Moreover, it appeared that the company had been sensitized to the issue of sex discrimination and we believe it will function in a much more appropriate way in the future. From the point of view of Sumitomo, we are convinced that the company itself has profited from the experience in that it has a much better work force with a higher level of training and with more employees who are willing to stay at the company with the expectation that there is some prospect for advancement.

Unfortunately, from the information we receive from clients and others who come to us, but who are often too afraid for their jobs to pursue legal action, few Japanese companies appear to have instituted real, objective employment practices. Instead, many appear to have retained their practice of treating women as no more than clerical or administrative personnel (no matter what their titles), and pigeonholing local men into highly particularized areas of activity. Some of these companies appear to have engaged in window dressing with the help of lawyers and consultants, but their actual practices remain unchanged.

The reason for this across-the-board lack of progress, in our view, is lack of government enforcement. In our view, the Equal Employment Opportunity Commission has fallen down on the job. Often, it ignores clear evidence of discrimination, including sworn "smoking gun" affidavits setting forth discriminatory practices which are not even dignified by sworn answers from the companies involved.

The handling of the C. Itoh America case by the EEOC is an example of this. In that case, the EEOC made findings of no probable cause despite sworn statements by the complainants that were not answered. When the case was filed in the United States District Court, C. Itoh's attorneys were quick to point out to the federal Judge that there had been no probable cause findings. The Judge responded that in light of all the no probable cause findings he had seen from the EEOC, he was unimpressed. Eventually, after reviewing a variety of sworn statements and depositions submitted to him, the Judge certified a class of past and present women employed in the New York office of C. Itoh America. In our opinion, the EEOC should not only have found probable cause in the C. Itoh case, it should have filed a pattern and practice lawsuit against that company and used the considerable powers of the government to put not only C. Itoh, but other companies, on notice that such clear discrimination would not be tolerated.

Another example of what we regard as the severe mishandling of a case involving a Japanese corporation are the charges we filed against The Sanwa Bank, Ltd. In that case, we represent

five women before the EEOC office in New York City. This firm asked that the EEOC New York office treat the Sanwa charging parties as a group. Taken together, their charges clearly pointed to a pattern and practice of discrimination. Despite our efforts to receive pattern and practice consideration of these charges over a three year period, the New York office adamantly refused to handle the matter in this way. We are informed that it took this action despite the recommendation of the field investigator, who was then taken off the case. Thereafter, the EEOC made no probable cause findings. These charges have been on appeal before the EEOC in Washington for approximately ten months. It goes without saying that the actions of the EEOC in this case act as a major barrier to effective enforcement of the anti-discrimination laws.

At present, we have additional cases involving American, Japanese and other foreign corporations at the EEOC's office in New York. In our view, these cases are investigated with extraordinary slowness, perhaps due to an overburdened staff. Moreover, we see the EEOC bending over backwards to accept whatever justifications respondent corporations put forward to justify their actions. In short, we see the EEOC as part of the problem, rather than part of the solution.

With regard to the EEOC, we also note that it appears to do nothing to verify the statistics which are submitted to it on the forms called EEO-1's. These forms require employers to break down their work forces in three categories: officials and managers, professionals and clericals. First, we have learned

that certain American subsidiaries of Japanese corporations do not report their employees from their Japanese parents on the EEO-1 forms. Thus, the extraordinarily small percentage of local officials and managers is disguised and the much higher numbers of Japanese employees in this category is eliminated. Additionally, in our experience, certain Japanese controlled corporations refer to many clerical and low level administrative employees as officials and managers so as to make it appear that there are more local employees at this level and particularly more women. As far as I know, the EEOC does nothing to investigate the accuracy of these figures. When we have called these problems to the attention of EEOC investigators, they have shrugged.

The Immigration & Naturalization Service's policies and practices with regard to granting visas to employees from parent corporations also are questionable. From the information we have received, many employees from Japanese parent corporations are allowed into the United States on visas which are based on claims that they are providing vital services for the American subsidiary. Yet, our clients tell us over and over that, at the lower levels, many of these parent corporation employees are here for training and know little or nothing about American business practices, the American marketplace or, often, the transactions they are here to engage in. Of course, after years in the United States, they gain this knowledge. If the INS would perform its function of reviewing these visa applications and investigating their bona fides, it is our belief that many applicants would not

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get visas. Necessarily, therefore, these jobs would go to Americans.

Lawyers in this firm also note that many American subsidiaries of Japanese corporations have affirmative action plans drawn up for them by American law firms. Presumably these documents are submitted to various federal, state and local agencies which require them before awarding publicly financed contracts. Like the EEO-1 figures discussed above, these plans often report statistics regarding the levels at which American employees function which have nothing to do with reality. Again, the monitoring agencies appear to accept this form of paper compliance rather than taking the most minimal steps to determine how these companies actually function.

Recent decisions of the United States Supreme Court have, of course, also affected the problem of enforcement of the employment discrimination laws. These decisions shield American subsidiaries of Japanese corporations and Japanese branches. As you know, since the Wards Cove decision of the United States Supreme Court, it is now extraordinarily difficult to prove discriminatory impact cases. Moreover, it is extremely hard to obtain meaningful money damages for those who are discriminated against in light of the Patterson decision. To expect private attorneys, mostly from small law firms, to undertake the difficult work of enforcing the employment discrimination laws on behalf of private litigants in the face of adverse federal court rulings is, at best, wishful thinking. Perhaps if the EEOC, the Justice Department and the INS would weigh in and do their jobs, the adverse

consequences of the Supreme Court's extraordinarily conservative employment discrimination decisions would be somewhat ameliorated. In the absence of governmental enforcement, however, the small private civil rights bar simply cannot be expected to deal with the problem. Ironically, the issue of employment discrimination is often cast in this country in terms of blacks and whites. More is involved, however.

The rights of women, as well as the rights of American men of all colors, have been severely compromised by the recent Supreme Court decisions. Moreover, the lower federal courts take their cues from the Supreme Court. Thus, fewer and fewer federal Judges are now willing to certify civil rights cases as class actions, thereby making it infinitely more difficult to eradicate discrimination. Individual cases, which are often settled for monetary considerations alone, on the basis of agreements that contain confidentiality orders, have no precedential value and do not effectuate systemic change. Therefore, they simply do not begin to do the job of eliminating employment discrimination. Instead, these individual cases are little more than a minor irritant -- another cost of doing business.

Congress simply has to make clear that the elimination of discrimination must ba given the highest priority. Even then, that will not be enough unless the government takes an active role in monitoring and enforcing the discrimination laws. This means that governmental agencies charged with eliminating discrimination must become functional again and must aggressively evaluate both the statistics and the complaints they receive to

ensure that something more than paper compliance is the reality. Moreover, additional teeth must be put into the civil rights laws. Discriminators should be required to pay for the pain and suffering they inflict, like other wrongdoers, and punitive damages should be available where discrimination is egregious. In this country, discriminators do not go to jail for their violations of law. In the absence of any criminal penalties for discrimination, both juries and judges should have the ability to impose meaningful civil awards which will both compensate victims and deter discriminators. Above all, the government must enforce the civil rights law, rather than leaving enforcement in the hands of small private law firms which not only must struggle against overwhelming odds, but are obligated to consider the personal goals of their clients and only incidentally the public interest.

Respectfully submitted,

Lewis M. Steel

LMS:PC

Mr. LANTOS. Mr. Morse, your prepared statement will be in the record and you may proceed any way you wish.

STATEMENT OF RONALD A. MORSE, EXECUTIVE VICE PRESIDENT, ECONOMIC STRATEGY INSTITUTE

Mr. MORSE. Thank you. I feel the impact of time discrimination. After 6 hours of sitting in the audience, there probably isn't too much left to bring to your attention. Let me say that—and I think this is sort of important in a way. Almost everything that has transpired today I could have predicted would have been discussed and would have been dealt with given my knowledge of Japan and the way the Japanese have operated in the United States.

In other words, while a lot of people are trying to deal with this as a legalistic question in this country, I would argue, and I will make a few points that this is part, as your opening statement suggested, it's part of a much broader question of the relationship between the two countries. There is no question the Japanese are here, they are going to stay here.

We are there, we are operating together. These questions of discrimination and employment practices have to be ironed out, they have to be solved, they have to be resolved, because it's important not only for us, but it's important for the Japanese themselves.

The Japanese and the Americans, to some extent because we approach this so legalistically, are insular in a sense. In other words we are not really dealing with the problem comprehensively. It is a cultural problem. Several people have gone back and forth on the cultural dimension. Culture is hard to deal with. Culture is something that we feel a little bit uncomfortable with.

I think it's important, and let me say why. First of all, on nothing of the debates and issues that we have with Japan, three to four do we have statistical control. Senator Bingham and a number of other people have tried to throw out whether to use technologies. What about science and technology? What about national security acquisitions? What about investment? We don't have statistical control over anything in the U.S. Government. To expect that we have statistical control over this issue, again, I think would have been predicted that we wouldn't have it and that it's very hard for anybody to get it.

The second thing is enforcement, whether it's SIFIUS on high technology acquisitions, whether it's on dumping cases. You take the issue with Japan on almost across the board, the United States Government is not interested in enforcement on violations of the rights and activities of American companies.

The cost to the injured which has come up several times. I mean, the dumping in this country. If you are a victim of foreign dumping, you have to bear the burden of trying to prove that you are the victim. All of those costs make it impossible for small American companies to be able to deal with foreign predators on the U.S. economy.

Again, the case here—you have to prove your guilt. You have to go to court. You have to be able to bear the burdens. There is a terrible burden on the American people when other people are violating their rights.

Finally, asymmetry. I think the thing that is most obvious is that you can't find any agencies in the United States Government, first of all, who have counterparts in Japan. Secondly, you can't find the agencies in this country that know what's going on in the other agencies. Beside that, nobody coordinates anything. To try to be able to deal with most of these problems the way we are set up is almost institutionally impossible.

Again, this has surfaced in any number of cases with the United States. The other thing is that the Japanese are going to get smart. You saw that with Honda. You can get the best and the brightest of the Americans to figure out how to beat the system, and the Japanese will do that because they can afford it.

We don't want them just to beat the system. We don't want them just to be able to say, "OK, we are meeting the laws, the legal constraints," because really even within the constraints of what legal—as we've seen from the enforcement agencies—even within that framework there is still a feeling that the principle, the spirit of the law, is not being dealt with.

The other thing is that by doing this type of pursuit of these issues we are doing a great service to the Japanese. I think what you would find in Japan is that Japanese women and Japanese minorities will be delighted to hear that you are pursuing these issues, because, in Japan, there is no enforcement of the laws that deal with these issues.

In other cases with the United States, whether it's dumping through various agencies, whether it's been auto quotas, whether it's been the Japanese not enforcing various types of antitrust laws, whatever it is. The most obvious case was a couple of years ago Americans raised the point of how different prices were for the same products between the United States and Japan.

Japanese consumers were delighted, and they put pressure on their government so that they would actually begin to open the market to the imports. I think what you are doing is very important, because what's going to happen is—in Japan there is tremendous discrimination. All of the things that you've heard today are reflections of what exists in Japan.

The Japanese women and Japanese minorities will benefit tremendously from the pursuit of these issues in the United States, because, as I mentioned in my testimony, the Japanese law was written by the United States occupation. Most of the rules and regulations the Japanese have been forced to use in Japan to guarantee human rights and things like that have come through their involvement in the United Nations and through their activities with the United States.

I think it's very important that we pursue this. The big question I think you have to face is: What works to make the Japanese tow the line? This has been something Americans have been grappling with again, for a decade.

First of all, there is no question that threat is wonderful. They have been taken to court. We've tightened up our laws on various things. We've gone to battle with them through USTR. There is not question that this is important. In other words, access to the U.S. market, access to opportunities in this country have to be controlled if that is one way to deal with it.

The second thing is that pressure, foreign pressure, is very important. In other words we have to take the battle to Japan. You can't just try to fight the battle here.

The one point that was raised which I think is very important was that possibly through the Federal contract compliance. In other words, making sure that anybody who gets access to Federal Government funding is complying with the law. In other words, "hit them in the pocket," I think is the way it was put.

Another thing is that you've got to raise the issue of employment discrimination to the same level that we have given dumping, tax evasion, preferences to Japanese subcontractors. What I would suggest, in closing, is: What can we do to try to raise the awareness of this both here and in Japan? would be a couple of things.

One, you could amend the 1988 Trade and Competitiveness Act to include something along these lines with foreign trade. Certainly, USTR should be pursuing this along with these other trade, and what I called in my testimony, this is really one aspect of investment friction, it's not an employment issue. It's part of the whole package of the way we relate to Japan. It should be treated along with these other dimensions of the problem which USTR and other Government agencies have a responsibility to pursue with vigor.

Certainly through GAO. I would suggest that the practices of American companies in Japan be looked into. The reason I say this is that Japan is a discriminatory paradise for American companies because there is no enforcement. Women come in and out of the market. They are not promoted to high levels, and other types of discrimination can take place by American companies in Japan.

Added to this is something very important. We, so far, have only asked about American employees in Japanese affiliates in the United States. What happens to an American citizen who works for a Japanese parent company in Japan when they are sent from the United States, the affiliate company, back to Japan? They are going to be subject to tremendous discrimination within Japan, even though it's legal.

This is something that has to be taken into consideration as more and more Americans are deeply involved in the Japanese economy. Finally, I think that you could put pressure on the foreign commercial service to make sure that this is an important issue in the countries where they are involved in overseas.

Certainly there should be somebody at the American Embassy in Japan responsible for keeping the pressure on in Japan, because most of the derogatory statements about Americans have emanated in Japan, not emanated in the United States, and by prime ministers and ministers in government.

In other words, the Japanese have a safe haven, at least they thought they had a safe haven, where they could say anything they wanted about foreigners, because in Japan it was accepted as OK. Now that Japan is not isolated from the world, and if they are going to prove themselves as good citizens globally, the responsibility will be on the Japanese side, in Japan, to be able to really come up to the standard of international employment practices and other types of behavior.

I think that's really where we have to take it. I think you are perfectly right in saying that Recruit Co. should not be allowed to

educate the Japanese on these types of practices once they have been violators of them. There are legitimate, well-positioned people to do these kinds of things. It should be done by the higher standards, and we shouldn't just leave it at the $100,000 requirement.

There should be a national effort to take Americans to Japan and conduct a concerted effort to educate them about the responsibilities they have in this country. Thank you.

[The prepared statement of Mr. Morse follows:]

JAPANESE INVESTMENT, DISCRIMINATION, AND EMPLOYMENT IN AMERICA

Statement

of

Ronald A. Morse
Executive Vice President
Economic Strategy Institute

before the

Employment and Housing Subcommittee
of the
Committee on Government Operations
U.S. House of Representatives

July 23, 1991

Considering employment and discrimination by Japanese in the United States provides an excellent opportunity to contrast two very different systems. The Japanese have already shown that there are certain business practices that can make a significant contribution to productivity and worker satisfaction both at home and in the United States. On the other hand, Japanese performance in the areas of race relations, of women in the work force, and of the use of foreign labor is not up to international standards.

Turning to the Japanese presence in America, there are three aspects to consider when evaluating the issue of Japanese becoming good citizens: the nature of their investments, their attitudes on race and gender, and their employment practices. First, the suddenness of Japan's overseas investment drive in the 1980s gave them little time to prepare a thorough overseas employment strategy. When they went abroad they either followed Japanese practices or relied upon the advice of foreign consultants. Second, their treatment of women and minorities is trailing behind the legal standards in the advanced world. And finally, they view the requirements of employment very differently.

This is not to say that the Japanese should not strive to improve their domestic and international performance in these areas. The key test for the Japanese business world in the years ahead will be the extent to which the Japanese can accommodate to a diverse and complex world. When the Japanese go abroad, they should be held responsible for their actions in compliance with foreign laws, customs, or practices.

INVESTMENT FRICTION

In one sense the Japanese are their own worst enemies. They initially tried to export everything from Japan, without investing abroad. Then they were convinced that to invest locally in the United States is to protect their access to our markets. Once they decided to transplant facilities from Japan, they enlisted the best and brightest of the American legal and consulting community to help avoid the difficulties of the U.S. employment market -- unions and minority issues being the most sensitive issues. On top of this the Japanese tended to bring with them management assumptions and corporate practices that reflect discriminatory practices in Japan.

Because of the sudden intensity and volume of Japanese investment in the United States in recent years, the Japanese have become the subject of considerable attention and scrutiny, perhaps disproportionate to the scale of their actual presence in America. While perhaps 40 percent of total Japanese direct investments are

in the United States (35 percent in real estate), total foreign assets in the U.S. account for a small fraction of U.S. assets. At the upper end, perhaps 8 percent of the American "manufacturing" workforce is employed in U.S. affiliates of foreign companies. Less than one percent of American land is foreign owned. With perhaps 1,000 factories in 45 states, the Japanese are, with the exception of California, Tennessee, and a couple of other states where investment levels are high, widely dispersed throughout the U.S. Some 500,000 Americans work for Japanese firms, less than 1 percent of the workforce. While Japanese tend to be exclusive owners (about 80 percent) of American manufacturing and service facilities, the bulk of their total U.S. investments are in financial assets -- bank deposits, corporate stocks and bonds, bills, and securities.

And while Japan's financial presence will continue to grow, although at an increasingly slower rate, it will remain marginal in the total sense. This is important to keep in mind because the American perception of Japan as an economic threat continues to be one-sided and exaggerated. This creates a concern with their business practices that is sometimes taken out of context and can be interpreted as reverse form of discrimination.

The current public mood about foreign direct investment is at best uncertain, but their is considerable uncertainty about Japanese investments. According to a Times Mirror poll by the Gallup Organization (March 1989), 74 percent of the U.S. populace feels that foreign investment is bad for the U.S. Seventy-eight percent of Americans favor a law to limit the extent of foreign investment in American businesses and real estate, while 89 percent support legislation requiring foreign investors to register with the government. But of the public officials and opinion leaders, who have the power to enforce investment registration, only 13 percent favor limiting foreign investment by law and only 48 percent back some form of required information registration. American elites out of self-interest generally are generally far more positive about foreign investment and less concerned where it comes from.

DISCRIMINATION BY JAPANESE

The "investment friction" discussed above has been compounded by a recurring pattern of derogatory racial stereotyping by high-level Japanese officials. While race in America is an American issue and Americans must deal with it, racist remarks in 1986 by former Prime Minister Yasuhiro Nakasone and then by Finance Minister Michio Watanabe triggered actions in the United States that raised questions about the intentions of Japanese charitable gifts, the selection of factory site locations, and employment practices. As a result discrimination investigations by the U.S.

Equal Employment Opportunity Commission against U.S. affiliates of Japanese firms, protests by the Congressional Black Caucus, and the fact that Japanese real estate investments involve few minority area purchases have shaped the American perception of the Japanese as biased and discriminatory. Representative Mervyn Dymally (D-CA), the chairman of the Congressional Black Caucus in the 100th Congress, issued a "Model Japanese Code of Conduct". This called on Japanese companies operating in the United States to engage in a vigorous affirmative action program, and to fund scholarships to enhance the participation of minorities in science and engineering training.

Race and gender discrimination are not new issues to the Japanese. Article 14 of the Japanese constitution, that was drawn up in 1947, sets forth the legal guarantees of equality, and states that people will not be discriminated against due to race, creed, sex, social status, or family origin. The legal rights of Japanese women were strengthened by the passage of the Equal Employment Opportunity Law in 1986. This law is focused on unfair hiring, promotion, and assignment procedures. Although these guarantees were put in place by the American Occupation, the Japanese have been lax in enforcement and there is no effective organization by minorities or women in Japan in defense of their rights.

A consistent and notable feature of Japanese self-awareness since World War II has been the sense that they are unique, and that the Japanese people are racially, socially, and culturally homogeneous. In general the Japanese, because of their lack of contact with foreigners, the lack of thoughtful discussion about race issues, and the failure of their textbooks to effectively raise these issues, are not well-informed about diversity.

There are currently several forms of discrimination practiced in Japan:

> Dark-skinned people in general are discriminated against by Japanese. Blackness is an undesirable trait and blacks in particular have historically been treated unkindly in Japanese literature and popular writing.
>
> Jews are also an object of prejudice. The Japanese are anti-Semitic though not actively so. There is a rich literature about the craftiness and plotting of Jews worldwide to undermine Japanese business interests.
>
> The Ainu, Japan's equivalent of the Native American, have been discriminated against since earliest times. They are an indigenous people quite distinct from the Japanese in physical appearance, lifestyle, and social organization.

Koreans and Chinese, make up more than 80 percent of the permanent foreign residents in Japan, and most of them were born in Japan. They pay taxes, but cannot hold public office or teach in public schools. This is a form of discrimination by national origin.

Other Asians receive discrimination because of their national origin. The Japanese have little sense of kinship with them and have always had ambivalent feelings about their own "Asian-ness".

The Burakumin, Japan's "invisible race", are indistinguishable from Japanese, but have long been the focus of caste and occupational discrimination.

Women are the most conspicuously discriminated-against segment of Japanese society. Eighty-five percent of Japanese women feel discrimination in promotions and 72 percent in wages in Japan. Only 3 percent of the companies in Japan put women in top jobs.

EMPLOYMENT PRACTICES

While there is considerable employment discrimination in the Japanese labor market, there is no doubt that the Japanese educational system and the corporate training programs prepare an excellent and effective workforce for Japanese business. This is one area that Americans can learn from.

What type of corporate assumptions and behavioral practices does a Japanese manager bring to his assignment in America? A brief listing would include:

Rigorous testing is required to enter a firm.

Loyalty is to the head office of the parent company in Japan. Locally hired executives have weaker authority than their counterparts in the United States.

Japanese have little cross-company job mobility. They assume they will work for only one company during their working years. The workplace is part of a long-term obligation.

Promotions are based on length of service or age.

Japanese managers are generally older and less well paid than their American counterparts.

Labor unions are organized on a company-by-company basis and share in the vicissitudes of corporate profits.

Distinctions between blue and white collar workers are blurred. Worker-management communication is essential.

The work ethic is one of team-work and continuous improvement.

Given the performance of the Japanese economy and the dedication of the workforce, the Japanese naturally believe that their way of doing things has considerable merit. Even American employees acknowledge the benefits of Japanese business practices as they apply to the workplace. To be sure the Japanese may seem to overemphasize the importance of education, team-work, and corporate loyalty as requirements for employment. Nevertheless, as long as these practices do not involve race, gender, or national origin discrimination, there is no reason to condemn them.

BUILDING GOOD CORPORATE CITIZENSHIP

Structural differences in corporate and government behavior and practices between the United States and Japan have been at the heart of bilateral trade friction over the past decade. Trying to strike a balance and identifying strengths and weaknesses on both sides has been a painful but productive exercise for both nations. Japan is clearly behind the United States in the area of equal employment opportunity. Helping the Japanese to be better employers in America is clearly related to raising consciousness in Japan about diversity and discrimination.

A constructive program to educate Japanese employers in America about American laws and regulations with regard to employment is only half of the task. Unless Japanese in Japan begin to have a better understanding about the negative impact of their discrimination policies abroad, Japan's ability to be accepted as a global partner will be diminished. While the Japanese record for good corporate citizenship in America has not been something they can take pride in, there are important lessons that can serve as a basis for improvement. Certainly, the first step should be for Japanese to take discrimination in their own country more seriously.

Mr. LANTOS. I want to thank both of you for outstanding statements. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

I just had one question, Mr. Morse, about when you had said the Japanese companies are getting smarter. I wanted to ask you exactly what you meant by that.

You cited Honda, and I'm all for getting companies in trouble if they are not complying with the law, if they are practicing discrimination in the workplace, but if they are improving and they are doing a good job—I don't know, it seemed like you were getting cynical. "Let's get them in trouble if they are discriminating, and then if they are not discriminating, then let's accuse them of knowing how to play the game or play with numbers."

When they are getting smarter, does that mean that they are not discriminating against American employers and therefore that's bad also?

Mr. MORSE. No. What I think I meant to say was, as we've heard all day, American laws and enforcement in this area, how close they have to come to the edge to avoid really taking a positive, aggressive affirmative action program, to figure it out. What I'm saying is that we don't want——

Ms. ROS-LEHTINEN. How is that different from an American company? How is that different from Ford or IBM, U.S.A.?

Mr. MORSE. My feeling is that this is a problem which shouldn't be looked at legalistically, but it should be looked at more broadly. Just getting even American companies—I don't think if they march up to the edge and discriminate, that that's right either, but I think the thing is so far the Japanese have come in very fast and very intensely into the United States, and they've made a lot of mistakes. They are learning, but what's going to happen is they will also be able to figure out how to do a minimalist type of treatment of this issue.

In my view, we want them just to comply simply with the law.

Ms. ROS-LEHTINEN. We want them to do more than an American company. We expect them to comply more fully than any other company because they are foreign owned?

Mr. MORSE. No, we want American companies to do more as well. My feeling would be——.

Ms. ROS-LEHTINEN. We have laws, and I would hope that we would expect companies to fulfill the obligations of those laws and expect nothing more from one company because they are foreign owned than from any other company.

Mr. MORSE. You're perfectly correct. I would, however, say that I think it's important for the Japanese themselves, as somebody who has lived there, know what they do and so on, that they actually outperform American companies in their performance just because they've benefited so tremendously and continue to benefit so tremendously from access to a market that is open and available in a way that over the years they have not made their economy as open to us.

Ms. ROS-LEHTINEN. Well, I would disagree with you. I would hope that we would set them to the very same standards and not discriminate and practice reverse discrimination against any other company. I'm not here defending any company, I don't know

Honda, I don't drive a Honda, they don't employ anybody in my district, I've never met with them, I don't know anything about the company, but I would expect them to comply just as much and no more than any other company in the United States.

Mr. Steel, about the testimony that you had given about litigation and bringing certain companies with discriminatory practices to court, would you say—I didn't get that from your testimony—that it's any harder to file suit against a Japanese company?

It seemed to me that if I erased the word "Japanese" from your testimony and I just heard sort of a Ralph Nader speech about how it's the little guy against the big company, and the same could be said about how difficult it is for any employee to file suit against any company, what is it that you believe makes it harder in a court of law to file suit against any corporation which has discriminatory practices?

Mr. STEEL. Oh, I don't think it's harder to file suit against Japanese companies. I don't think I said that. I think that as a matter of fact, Japanese companies or, rather, American subsidiaries of Japanese companies defend in a variety of ways. Some, when you sue them, from sitting down trying to figure out if the matter can be settled, if they can enter into an appropriate consent decree to resolve the situation to engaging in endless litigation.

Ms. ROS-LEHTINEN. Like other companies?

Mr. STEEL. That's right. Absolutely.

Ms. ROS-LEHTINEN. I just wanted to be clear that it's just as hard or just as difficult to sue any Japanese company as an American company.

Mr. STEEL. Absolutely. What's occurred, of course, though, in the last 2 or 3 years—really the last 10 years, if you look at it—is the that the law, the civil rights law has been eroded and that, of course, affects enforcement.

Ms. ROS-LEHTINEN. Chairman Lantos and I both voted for that law, so you don't have to preach to us.

Mr. STEEL. Against all companies. The erosion helps them all.

Ms. ROS-LEHTINEN. Thank you.

Mr. LANTOS. I want to thank both of you.

Before we wrap up the hearing, I want to express my very deep appreciation to the staff that prepared this hearing: Ms. Joy Simonson; Ms. Lisa Phillips; and our chief of staff, Mr. Stu Weisberg. It's been enormously informative and this is just the beginning of what will be a series of hearings on this subject.

The committee is adjourned.

[Whereupon, at 3:54 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

EMPLOYMENT DISCRIMINATION BY JAPANESE-OWNED COMPANIES IN THE UNITED STATES

THURSDAY, AUGUST 8, 1991

HOUSE OF REPRESENTATIVES,
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
San Francisco, CA.

The subcommittee met, pursuant to notice, at 10 a.m., in room 228, San Francisco City Hall, San Francisco, CA, Hon. Tom Lantos (chairman of the subcommittee) presiding.

Present: Representatives Tom Lantos and Christopher Shays.

Also present: Stuart E. Weisberg, staff director and counsel; Joy R. Simonson and Lisa Phillips, professional staff members; and Christina J. Tellalian, minority professional staff, Committee on Government Operations.

Mr. LANTOS. The Employment and Housing Subcommittee will please come to order.

This is the second in a series of hearings by the Employment and Housing Subcommittee to examine employment discrimination by Japanese companies in the United States.

At our first hearing 2 weeks ago in Washington, DC, we heard shocking testimony from American workers about discriminatory treatment and denial of advancement opportunities by Japanese-owned companies in the United States.

We were told of female professionals and account executives at a securities company, Nikko Securities, being required to work at the reception desk at lunch hour, a duty not shared by their male counterparts.

We heard testimony about a Japanese-owned employment agency operating in California, Recruit, which used code words to identify potential workers by race, sex, and age, and discriminated regularly by not referring applicants based solely on race, sex, and age.

In one instance on a recruiting form written in Japanese and posted in-house was the notation, "Americans and Blacks: No."

While we do not know or have specific data to measure the extent of employment discrimination practiced by Japanese or other foreign-owned companies, there does appear to be a pattern of discriminatory employment practices unique to Japanese companies operating in the United States.

The bulk of the top managerial positions of Japanese companies are reserved for Japanese nationals who come and go on a rotating basis from Japan, usually for 2 or 3 years. With the exception of

former Yankees owner, George Steinbrenner, most American companies don't change their managers that frequently.

It also appears that Japanese cultural attitudes toward women and the second-class treatment of women in Japan get carried over to their employment practices in the United States.

As one of the witnesses at our earlier hearing observed, at American companies discrimination and sexism is an individual act practiced by particular managers and supervisors, whereas in Japanese companies it appears to be institutionalized in nature.

Also, there appears to be very little effort to recruit, hire, or promote minorities, and wherever there are instances they clearly are window dressing and tokenism.

A few days ago, in response to news reports on our earlier hearing, we received a very moving letter from a Japanese-American woman who worked for one of the Japanese companies in the United States. While she generally agreed that Japanese companies discriminate against American males, females, and minorities, this woman who waited 11 years for her first promotion wrote, and I quote:

> The most oppressed class of employees in Japanese-owned companies in the United States is a majority of female Japanese-American employees. Being a Japan-bred bilingual female employee places you at the bottom of the totem pole. The most unfortunate truth is that more often than not Japanese-American employees, women, are bypassed for promotions or grade-ups in favor of more vocal, boisterous, demanding employees because we are relatively quiet, diligent, and trouble-free workers, known not to make waves.

As I emphasized at our first hearing, and I wish to reemphasize it at this hearing, I have the highest regard and admiration for the Japanese-American community in this country and for its enormous contributions to our Nation. Particularly here in California we are aware of the uniquely important role played by Japanese-Americans in the economic, academic, political, and cultural life of our State. This Nation and this country would be much poorer indeed if it were not for the enormous contributions of our own Japanese-American citizens.

I might add parenthetically that some of the finest Members of the U.S. Congress happen to be Japanese-Americans, some from this State.

Discrimination, of course, is not exclusively an American, or Asian, or European, problem. I am proud that the laws against discrimination are strong in our Nation. This subcommittee intends to see to it that the laws are followed by employers and enforced by supposedly watchdog Federal agencies, such as the Equal Employment Opportunity Commission and the Department of Labor, Office of Federal Contract Compliance.

If a company locates in the United States and hopes to grow and profit from our market, we expect and, yes, we demand that it follow the law. It is as simple as that.

Finally, Federal agencies such as the EEOC are either unwilling, or unable, or do not have the resources, to examine the extent of employment discrimination by Japanese companies in the United States.

I am announcing this morning that I intend to ask the General Accounting Office, the investigative arm of Congress, to conduct an

extensive study of foreign-owned companies in the United States, and their compliance with our equal employment opportunity and nondiscrimination laws.

It gives me extraordinary pleasure to call on my distinguished Republican colleague from Connecticut. Congressman Christopher Shays was the strongest voice during our year and a half long HUD hearings, 29 in number I believe, and he brought to the HUD investigation, as he is bringing to this study, a degree of integrity, and intelligence, and commitment to upholding the laws of the United States. The people of Connecticut are indeed fortunate to have a man of Congressman Shays' distinction representing them, and I am delighted to welcome Congressman Shays.

Mr. SHAYS. Thank you, Mr. Chairman. I would like to thank you for conducting these very important hearings. And I say to you, as I said yesterday, I am grateful to be a member of the Employment and Housing Subcommittee of Government Operations because I think of the very important work that this committee does, has done, and is doing, and will be doing, in part because of the extraordinary leadership that you have provided this committee, and also because of the fine staff that you have assembled to serve us and the work of this committee.

I just might say, parenthetically, that I noticed as I came into this building that some of the archways were shored up. I did not find it very comforting your response to my point that I was a little uneasy being in San Francisco in the building that was somewhat affected by earthquakes. Your response to me was "Well, if there is an earthquake we will die together." I love you very much, but I don't want to die with you. [Laughter.]

Mr. LANTOS. Let me assure you the earthquakes will be purely intellectual ones at the present.

Before calling the first panel of witnesses the Chair would like to express deep appreciation to the committee staff who prepared the work for this hearing: Ms. Lisa Phillips, Ms. Joy Simonson, Stu Weisberg, Margery Ferrar of my district office, and a very able Republican staff person, Christina Tellalian. We are very pleased with the quality of work on both sides of the aisle.

We will now ask the first panel of witnesses to come up to the witness table: Mr. John Horton, manager at Toyota at Technical Center; Mr. Thomas McDannald, former NEC executive; Mr. Karl Biniarz, former branch manager at Dai-Ichi Kangyo Bank; Chet Mackentire, former Ricoh employee; John Piechota, former Sanwa Bank employee; and Ms. Pearl M'Coy, former Sanwa Bank employee.

If you will please stand and raise your right hand.

[Witnesses sworn.]

Mr. LANTOS. We are pleased to have all of you. We apologize for the crowded conditions. We would like to ask all of you to make your oral statement as concise as possible. In every instance your prepared statement will be entered in its entirety in the record.

We begin with you, Mr. John Horton, manager of Toyota Technical Center.

Mr. SIMON. Mr. Chairman, my name is Stephen Simon, and I am Mr. Horton's attorney.

Before the committee begins and Mr. Horton reads his statement, I would like the record to reflect that we are involved in litigation at the present time. Mr. Horton has just completed day six of a grueling deposition, with no end in sight. We believe designed simply to harass him and attempt to determine how many possible minute inconsistencies can be drawn from his testimony. That deposition will continue tomorrow.

Mr. Horton is appearing here voluntarily and at his own expense. He is more than happy to assist the committee with this investigation. We would, however, ask that the committee exercise some sensitivity with respect to some of the issues in this case. We do not wish to play our hand here before representatives of Toyota Technical Center and Toyota Motor Corp. Beyond that, however, he is here and prepared to proceed.

Mr. LANTOS. Well, we appreciate your statement, and we appreciate Mr. Horton's appearance on a voluntary basis. We are sensitive to the fact that in many such instances legal proceedings are underway. The problem with legal proceedings, as you know as well as we do, they may take years to resolve.

You are at the inquiry stage I take it and since both you and the company will ask lots of questions of each other during the course of this stage of the legal proceedings, I believe our questions will in no way interfere with the ongoing legal process. But I appreciate your comment, and we appreciate Mr. Horton's presence.

You may proceed any way you choose.

STATEMENT OF JOHN HORTON, MANAGER, TOYOTA TECHNICAL CENTER U.S.A., INC., ACCOMPANIED BY STEPHEN SIMON, ATTORNEY

Mr. HORTON. Good morning, Mr. Chairman, members of the committee. Thank you for inviting me here today.

My name is John Horton, and I have been a middle management employee at Toyota Technical Center for over 10 years. I have agreed to appear before the committee because of the discriminatory employment practices of Toyota Technical Center U.S.A., Inc. which have taken place during my term of employment.

I will refer to Toyota Technical Center U.S.A., Inc. just as TTC.

Mr. LANTOS. How long have you been working at Toyota Technical Center?

Mr. HORTON. Approximately 10½ years.

Mr. LANTOS. Ten and a half years?

Mr. HORTON. Yes, sir. And before I actually launch into my speech I would like to make a correction. It says that I am former manager. Actually I am still a manager.

Mr. LANTOS. You are still a manager.

Mr. HORTON. At least I was as of 5 p.m. last night.

Mr. LANTOS. Well, we have every expectation you will be as of 5 p.m. this afternoon.

Mr. HORTON. Thank you. The following is a brief outline of my employment history at TTC. I was hired by Toyota Technical Center on March 16, 1981, as an assistant manager of administration. Currently, my job title is manager of administration. I am in charge of purchasing, import and export, and facilities.

My first change in job title was in January 1984 when I was redesignated senior assistant manager of administration, a title first created at that time and never used again since.

Then, in January 1988 I was redesignated manager of administration, the title I currently hold. Until the late 1980's, I was the only American manager at TTC. Today, I am one of only very few Americans at the managerial level although none of us has advanced beyond middle management.

During my employment I worked on several of TTC's——

Mr. LANTOS. Could I stop you there for a minute?

Mr. HORTON. Yes, sir.

Mr. LANTOS. You say no American has advanced beyond middle management.

Mr. HORTON. Yes, sir.

Mr. LANTOS. Approximately how many people at Toyota Technical Center are above middle management?

Mr. HORTON. In my best estimate 20.

Mr. LANTOS. Twenty.

Mr. HORTON. Yes, sir.

Mr. LANTOS. And is it safe to assume that all of those are Japanese citizens?

Mr. HORTON. Yes, sir.

Mr. LANTOS. Is it your inference that some of the middle management U.S. citizen employees at Toyota Technical Center would be qualified to advance to levels above middle management?

Mr. HORTON. Yes, sir.

Mr. LANTOS. Are you perhaps implying that some of the people above middle management are less qualified to hold those higher management jobs than people who are currently middle management U.S. citizens?

Mr. HORTON. Well, I think actually my grievance is that Americans are not considered for those levels.

Mr. LANTOS. They are just not considered for those levels.

Mr. HORTON. Right, sir.

Mr. LANTOS. OK. Please go ahead.

Mr. HORTON. During my employment I worked on several of TTC's expansion projects and was recently involved in the planning, acquisition, and development of the Multi-Purpose Testing Facility in Maricopa County, AZ. I represented TTC as liaison in negotiations and was commended on my performance, but was later replaced with a Japanese national.

TTC's top management has twice refused to consider me or other non-Japanese employees for promotions including promotion to general manager of the Arizona testing facility in October 1990. Although I and other non-Japanese nationals were clearly qualified for the position, it was given without posting to a Japanese national who had worked in the United States only a short time.

Mr. LANTOS. How long had that individual been working in the United States?

Mr. HORTON. Approximately 1 year.

Mr. LANTOS. One year.

Mr. HORTON. Yes, sir. No reason was ever given to me for the failure to promote either myself or another qualified American. Other promotions without posting were automatically made on

February 1, 1991, from general manager to vice president and also from manager to general manager. Both positions went to Japanese nationals without consideration to Americans.

I was also denied promotion to general manager of administration in March 1991. On March 25, my supervisor, Masanobu Kodaira, chief financial officer, stated that I was not considered for the position because I had opposed the differential treatment of American staff.

Mr. LANTOS. Would you repeat that last statement because I find it mind-boggling? But go ahead.

Mr. HORTON. Yes, sir. On March 25, my supervisor, Masanobu Kodaira, chief financial officer, stated that I was not considered for the promotion because I had opposed the differential treatment of American staff. I was originally hired to supposedly lead the Americanization of TTC, but the company has repeatedly rejected my calls for race-neutral promotions.

Over the past 10 years I have received exemplary performance appraisals on a consistent basis which changed only when I began to complain of discriminatory practices. No one ever informed me that I would be dealt with in this fashion when I was originally hired. These are but a few examples of the discrimination that occurs and has occurred at TTC.

In order to fully explain the situation of Americans and other non-Japanese employees at TTC I will briefly need to describe TTC's relationship to its parent company, Toyota Motor Corp. of Japan, which I will just refer to as TMC.

TMC controls the policies and procedures of certain domestic corporations such as TTC through ownership and manipulation of stock issues, interlocking board of directors and interchangeable corporate officers so that for all practical intents and purposes the domestic corporation has no independent authority or identity.

TTC is structured in this manner so that TMC can exercise control over the day to day operations. At all times TTC has had 80 percent of its stock directly owned by TMC with the remaining 20 percent owned by other TMC subsidiaries or other captive entities.

TTC is used as a rotating training ground for executives and non-executives of Toyota Motor Corp. of Japan which consistently brings in Japanese nationals to perform job duties for which qualified Americans exist. This prevents United States citizens and non-Japanese nationals from advancing in TTC and inevitably Toyota Motor Corp.

TTC has only limited opportunities available to employees of Toyota Technical Center who are not Japanese nationals. For example, the company has periodically manufactured new levels of authority to insert between my position and that of upper management so as to exclude myself and others from competitive promotions and advancements.

They have refused to rotate me or other non-Japanese nationals to Japan and have prevented me from working with Japanese officials overseas, both of which activities are considered crucial to an employee's ability to advance within the corporation.

In the past, the company has used the excuse that Americans do not know the Japanese way, or don't know the Toyota way, or do not speak the Japanese language. I have lived and worked in

Japan; I speak Japanese, and I have been willing to relocate to Japan.

Furthermore, TTC has instructed me not to speak the Japanese language to coworkers and Japanese nationals and has prohibited Japanese employees from speaking their language to me.

Mr. SHAYS. Could I just ask you——

Mr. HORTON. Yes, sir.

Mr. SHAYS [continuing]. Was any explanation given as to why?

Mr. HORTON. Well, one explanation that I recall was that this is America and we should speak English, but then they would turn on their heel and have a 2 hour conversation with a coworker in Japanese.

Mr. SHAYS. But you are telling us that you speak fluent Japanese? Let me put it this way, do you speak fluent that you can communicate? How would you grade your ability to speak Japanese?

Mr. HORTON. That had been asked of me many times, and what I decided to do last year was to put myself through a testing process, and I decided to take every course that UCLA had to offer on the subject. I have now completed four and have three A's and a B+, and I have a lot of letters from Japanese instructors that would be willing to answer that in more detail.

Mr. SHAYS. Thank you.

Mr. LANTOS. But of course one way to bring your level of Japanese proficiency higher would be for you to be able to communicate in Japanese with your Japanese fellow workers.

Mr. HORTON. Absolutely. That is correct, sir. TTC has also created dual management positions which require non-Japanese nationals with allegedly management responsibilities to report to a parallel Japanese national manager thereby depriving them of any real authority or ability to rise and achieve on a competitive basis.

Thus, non-Japanese middle management has in all instances been required to report to Japanese nationals. The effect of these practices that been the creation of the so-called "glass ceiling" which keeps non-Japanese employees from rising to the higher executive levels at TTC or Toyota Motor Corp. of Japan.

So, finally, the complaint that I have filed against Toyota through my attorneys, Greenberg & Simon of Santa Monica, CA, alleges employment discrimination, breach of contract, intentional interference with contractual relationships, breach of implied covenant of good faith and fair dealing, fraud, and violation of civil rights.

There has been no response to date from Toyota on this matter other than a general denial, and, as Mr. Simon had said, some several days of deposition.

In September 1990 I wrote a letter of grievance to Mr. Kenz Ito, former executive vice president of TTC. The grievance outlined many of my complaints regarding the differential treatment between the American and Japan staff and requested that these practices cease.

Approximately 2 or 3 months later I replied to Mr. Ito that he was unable to remedy the situation. I then informed him that unless things changed I would have to take the grievance outside of the company.

On April 30, 1991, very recently, Mr. James Griffith, formerly of Redken Industries and TRW, was hired as the general manager of administration. This is the first non-Japanese national to achieve such position. Curiously, Mr. Griffith, who I think is a fine individual, does not speak the Japanese language, nor has he previously worked for a Japanese company. I believe his hiring is a direct response to my grievance to Mr. Ito, and amounts to nothing more than a smokescreen. Whether Mr. Griffith ever achieves a real level of authority in the company will depend upon the outcome of my lawsuit and perhaps these hearings. Hopefully, Mr. Griffith will benefit from both. My career, of course, is over. Thank you.

[The prepared statement of Mr. Horton follows:]

Prepared Statement of John Horton, Manager, Toyota Technical Center U.S.A., Inc.

My name is John Horton, and I have been a middle management employee of Toyota Technical Center for over ten years. I have agreed to appear before the Committee because of the discriminatory employment practices of Toyota Technical Center U.S.A., Inc. (TTC) which have taken place during my term of employment.

The following is a brief outline of my employment history at TTC. I was hired by Toyota Technical Center on March 16, 1981 as an Assistant Manager of Administration. Currently, my job title is Manager of Administration. I am in charge of purchasing, import and export, and facilities. My first change in job title, was in January of 1984 when I was redesignated Senior Assistant Manager of Administration, a title first created at that time and never used again since. Then, in January of 1988 I was redesignated Manager of Administration, the title I currently hold. Until the late 1980's, I was the only American Manager at TTC. Today, I am one of only very few Americans at the Managerial level although none of us has advanced beyond middle management.

During my employment I worked on several of TTC's

expansion projects and was recently involved in the planning, acquisition, and development of the Multi-Purpose Testing Facility in Maricopa County, Arizona. I represented TTC as liaison in negotiations and was commended on my performance, but was later replaced with a Japanese National.

TTC's top management has twice refused to consider me or other Non-Japanese employees for promotions including promotion to General Manager of the Arizona Testing Facility in October 1990. Although I and other non-Japanese Nationals were clearly qualified for the position it was given without posting to a Japanese National who had worked in the United States only a short time. Previously it had been the practice among Japan staff to appoint as General Manager that Manager with the greatest involvement in the project. No reason was ever given to me for the failure to promote either myself or another qualified American. Other promotions without posting were automatically made on 01 February 1991 from General Manager to Vice-President and also from Manager to General Manager. Both positions went to Japanese Nationals without consideration to Americans.

I was also denied promotion to General Manager of Administration in March 1991. On March 25, my supervisor, Masanobu Kodaira, Chief Financial Officer, stated that I was not considered for the position because I had opposed the differential treatment of American staff. I was originally hired to supposedly lead the Americanization of TTC, but the company has repeatedly rejected my

calls for race neutral promotions. Over the past 10 years, I have received exemplary performance appraisals on a consistent basis which changed only when I began to complain of discriminatory practices. No one ever informed me that I would be dealt with in this fashion when I was originally hired. These are but a few examples of the discrimination that occurs and has occurred at TTC.

In order to fully explain the situation of American and other Non-Japanese employees at TTC, I will need to describe TTC's relationship to its parent company, Toyota Motor Corporation of Japan. TMC controls the policies and procedures of certain domestic corporations such as TTC through ownership and manipulation of stock issues, interlocking boards of directors and interchangeable corporate officers so that for all practical intents and purposes, the domestic corporation has no independent authority or identity. TTC is structured in this manner so that TMC can exercise control over its day to day operations. At all times TTC has had 80% of its stock directly owned by TMC with the remaining 20% owned by other TMC subsidiaries or other captive entities.

TTC is used as a rotating ground for executives and non-executives of Toyota Motor Corporation of Japan who consistently bring in Japanese Nationals to perform job duties for which qualified Americans exist. This prevents U.S. citizens and Non-Japanese Nationals from advancing in TTC and inevitably Toyota Motor Corporation.

TTC has only limited opportunities available to employees of Toyota Technical Center who are not Japanese Nationals. For example, the company has periodically manufactured new levels of authority to insert between my position and that of upper management so as to exclude myself and others from competitive promotions and advancements. They have refused to rotate me or other non-Japanese Nationals to Japan and have prevented me from working with Japanese officials overseas, both of which activities are considered crucial to an employee's ability to advance within the corporation. In the past, the company has used the excuse that Americans do not know the Japanese way or do not speak the Japanese language. I have lived and worked in Japan; I speak Japanese, and I have been willing to relocate to Japan.

Furthermore, TTC has instructed me not to speak the Japanese language to co-workers and Japanese Nationals and has prohibited Japanese employees from speaking their language in my presence thereby effectively excluding me from contact with all but a select group of company officials.

Further acts and occurrences of discrimination at TTC include discriminatory salary and benefit packages in favor of Japanese Nationals. In fact, I believe I am the lowest paid of all managers at my level, only a very few of which are Americans. No reason has been given for these salary inequities. TTC also employs discriminatory processes of selection for promotion in

favor of Japanese Nationals and discriminatory treatment of non-Japanese Nationals with respect to terms and conditions of employment. These are based solely on race and national origin considerations. This in effect creates a glass wall between American and Japanese National employees at TTC. The Japanese Nationals have their own Human Resource manager and Payroll manager. In addition all other functions of employment of Japanese Nationals are controlled by the "Japan staff". Whereas Americans report to American and Japanese Nationals, Japanese Nationals do not report to Americans.

TTC has also created dual management positions which require non-Japanese Nationals with allegedly management responsibility to report to a parallel Japanese National Manager thereby depriving them of any real authority or ability to rise and achieve on a competitive basis. Thus non-Japanese Middle Management is in all instances required to report to Japanese Nationals. The effect of these practices has been the creation of the so-called "glass ceiling" which keeps non-Japanese employees from rising to the higher executive roles at TTC or Toyota Motor Corporation of Japan.

The complaint that I have filed against Toyota, through my attorneys, Greenberg & Simon of Santa Monica, California, alleges employment discrimination, breach of contract, intentional interference with contractual relationships, breach of implied covenant of good faith and fair dealing, fraud, and violation of

civil rights.

There has been no response to date from Toyota on this matter other than a general denial. Thank you. Are there any questions?

Mr. LANTOS. Thank you very much, Mr. Horton. We will have a number of questions to ask of you later.

We will now go to Mr. Thomas McDannald, former NEC executive. Your prepared statement will be entered in the record in its entirety. You may proceed any way you choose.

STATEMENT OF THOMAS McDANNALD, FORMER NEC EXECUTIVE

Mr. MCDANNALD. Thank you. Thank you for asking me to appear before this committee. Like Mr. Horton next to me, I had filed a lawsuit against my former employer, NEC Electronics, back in 1987. That case was resolved in 1988 on the day of the trial. The terms and conditions of that settlement were kept secret. I cannot talk about that. In addition to that, all of the documents that have been submitted——

Mr. LANTOS. Could I ask a question with respect to the terms of the settlement?

Mr. MCDANNALD. Sure.

Mr. LANTOS. Not the details of the settlement because as you say part of the settlement was that it be kept secret. Was the settlement kept secret at your request or at the request of the company?

Mr. MCDANNALD. I believe it was kept at the request of the court. I believe it was a mutually agreed upon thing.

Mr. LANTOS. OK. Go ahead.

Mr. MCDANNALD. In addition to that, all of the documents that had been submitted during discovery were sealed at that particular time and are no longer available for any type of perusal.

As far as myself is concerned, I worked for approximately 16 years at Rockwell International in southern California. The highest position I held at that corporation was director of employee and labor relations.

I terminated from Rockwell International in 1970 and accepted a job with Raytheon Co., a semiconductor division up in Mountview, CA. During my period at Raytheon I served as an investor relations manager, an international assembly manager with responsibilities in Mexico, the Philippines, and in Southeast Asia.

In January 1979 I was recruited by a company called Electronic Arrays that had just been acquired by NEC Corp. I went to work for Electronic Arrays and NEC Corp. in April 1979 and worked continuously for them until if I recall correctly it was August or September 1987, at which time they discharged me.

I started out with NEC and Electronic Arrays as a director of human resources. In 1980 I was promoted to vice president of human resources and administration.

In 1982 the corporation, which had three subsidiaries, one in Boston, MA, one in Sunnyvale, CA, and one in Mountview, CA, it was decided to merge these corporations, these three subsidiaries, into one corporation. I was given part of the responsibility for merging those three entities and the corporation was in fact merged sometime I think in 1983.

At that point in time, either late 1982 or 1983, I was promoted to vice president of administration for the consolidated corporation. I was placed on the board of directors for the company.

The responsibilities I had over most of this period of time was I was responsible for the legal department, business planning department, government and public relations department, management information group, human resources, corporate services, and was a director on the board of directors.

From the period of the acquisition that I was there from 1979 through 1984 the basic words that were mouthed by NEC officials, whether they were assigned here in the United States or in Japan, was that the company was an American company, they wanted to retain it as an American company, and it would be run by Americans.

This seemingly changed during the—not only seemingly, it did in fact change during the 1984–85 time period. Up until that point in time there were probably, oh, I would guess not more than five or six Japanese nationals working within the company.

Unlike something in your opening comments, Mr. Chairman, and some of the things Mr. Horton had said, we started out as an American company and over a period of years became more and more Japanized as more and more individuals from Japan were brought over to the United States and operating the company.

In 1984, maybe it was late 1983, we opened a manufacturing facility in Roseville, CA, and at that point in time a number of Japanese nationals came over extensively to do what was called a technology transfer. Up until the time I left either those individuals or their replacements were still there. As a consequence there certainly was a deprivation of opportunities for individuals in that manufacturing facility for advancement.

In late 1984 the president of the consolidated company, who was a Japanese national, notified each of the American managers within the company and the board of directors that he was resigning from NEC subsidiary and the corporation and was joining an American corporation which would be a subsidiary of an American corporation in Japan. He was succeeded by an individual who——

Mr. LANTOS. Could I ask you to sort of skip some of these details and come to the basic issue we are dealing with?

Mr. MCDANNALD. OK. In late 1984 a new president was selected as a result of this individual leaving. His first act to me in January 1985 was he called me into his office and told me he wanted me to fire the vice president of manufacturing who was also on the board of directors. His purpose for firing the vice president of manufacturing was that he had suggested that this Japanese national was not qualified to be president of the company, that he "rejected me" and as a consequence wanted him fired.

I told him there were some problems there, that the individual had performed his work very, very well, that there was no basis for discharge. He said, "I want him out of here anyway." I was instructed to go talk with the individual and try to negotiate some sort of a departure for him. That departure was eventually negotiated over a period of time, and the individual left about September 1985.

During this entire period of time there were more and more Japanese nationals being brought into the company. There were numerous discussions about how it would be important for the company to have these nationals in NEC Electronics so they could com-

municate directly with Tokyo, the communications problem being the one that they seemed to be most interested about.

It was pretty clear to me that it was not so much that, but they just wanted the Japanese to be in control of the company and certainly not the American management of that company.

During the period of time that all of this was going on they ended up with a VP of manufacturing, a VP of finance, they brought in under me a vice president of human resources who was Japanese, again ostensively so he could communicate with Japan in a better way. I don't know what that has got to do with running a human resources department in the United States, but nevertheless that is what they wanted to do and they did it. They brought individuals into the marketing departments.

I guess maybe in just kind of a roundup or summary of what I guess I am trying to say is that what started out as an American company, in my view, became nothing more than a satellite for a Japanese corporation. It was clear to me they wanted control from Tokyo. It was clear to me that they were not going to allow the Americans to run that company as they did earlier profess they were going to do.

Most of the Americans that were in there have gone and are no longer there. I haven't the foggiest idea who is running the company now, but the pattern I believe of discrimination over a period of time is pretty evident.

Mr. LANTOS. Thank you very much, Mr. McDannald.

We next hear from Mr. Karl Biniarz, former branch manager of Dai-Ichi Kangyo Bank.

STATEMENT OF KARL JOACHIM BINIARZ, FORMER BRANCH MANAGER, DAI-ICHI KANGYO BANK

Mr. BINIARZ. Thank you, Mr. Chairman and members of this committee, for the opportunity for me to give testimony as it relates to the discrimination practiced by my former employer, Dai-Ichi Kangyo Bank of California, hereafter collectively referred to as DKB of California, or Dai-Ichi Kangyo Bank Ltd. Agency in California.

My employment at DKB of California commenced on September 14, 1987, as vice president and manager of the bank's San Diego branch and was involuntarily terminated when I was physically attacked by my direct supervisor on March 16, 1990. In my capacity I was to be in full charge of the branch. Although at——

Mr. LANTOS. What do you mean physically attacked?

Mr. BINIARZ. I was struck across my chest by his arm.

Mr. LANTOS. And what was the alleged provocation for that?

Mr. BINIARZ. In my attorney's and in my opinion, since I am in court, it was that I was not subservient enough to either listen to his discussion or for another reason, because I was talking to another Japanese officer of the bank at the time.

Although at the time of my employment I was led to believe that I had full authority for hirings, promotions, and terminations, even simple day to day matters, I had no authority whatsoever without checking with the bank's head office in Los Angeles.

The head of personnel in Los Angeles, a United States national, never made decisions without prior checking and receiving approval from her superior, a Japanese expatriate national.

Officer and nonofficer staff we intended to hire for San Diego received the closest of scrutiny. I was informed to have a "proper profile" for a loan officer position. A Japanese senior executive of DKB of California instructed me that a proper profile meant "No Women or Blacks" for consideration.

I was also informed——

Mr. LANTOS. Who told you this?

Mr. BINIARZ. My immediate superior officer, a gentleman by the name of Mr. Nakai, who was at that point in time senior executive vice president of the bank.

Mr. LANTOS. He gave you this directive orally?

Mr. BINIARZ. He told me this verbally on the way back from lunch to the branch on the street, obviously not in the branch.

Mr. LANTOS. No women and no blacks?

Mr. BINIARZ. That is right. I was also informed by a Japanese official that after having hired two Filipino-Americans in the San Diego office that it was "sort of given that Filipinos in general tend to be somewhat lazy." I took that to mean that hiring even Filipinos was inappropriate for the bank. I have attached a memo by a caucasian senior vice president of the bank written to Japanese bank officials corroborating my experience with the bank.

I made recommendations for promotions in grade or new job responsibilities. I made several recommendations to train one very competent female employee for an eventual loan officer position. The same VP of personnel continued to caution me on an irregular and intermittent basis that "She did not feel the bank would wish to entertain a female loan platform officer" and "I most probably was wasting my time and energy to do so."

It has been confirmed by deposition testimony under oath by a senior vice president—non-Japanese—that an executive search firm was called by a Japanese expatriate officer of DKB and told that candidates the search firm sends to interview should not be blacks or women.

As VP/manager in the San Diego branch I was on a paripassus basis with three other branch managers of the bank. DKB of California operates only four branches in California. Yet, while three Japanese expatriate managers received a 13th and, indeed, a 14th salary and automatic bonuses, I did not receive similar renumeration.

The expatriate Japanese management's discriminatory employment practices included but were not limited to areas previously mentioned but more specifically involved absolute lack of authority for American officers in their delegated limits making them effectively "Ambassadors without Portfolio."

While employed at the bank there was clear evidence that the bank in its business efforts within California made a conscious effort to evade its corporate responsibilities in connection with the Community Reinvestment Act [CRA] compliance.

The bank went so far as to remove Yellow Pages advertisement listings in Los Angeles so that it wouldn't be bothered in what it considered worthless credit requests. I was informed to cancel our

Yellow Pages advertising program in San Diego which had been previously designed by myself and my assistant to effectively reach minorities and implement the CRA compliance.

I have been asked to make recommendations to this committee on overcoming the problems experienced at DKB of California pertaining to discrimination in employment practices. Certainly the most important is to fully integrate the U.S. nationals into the decisionmaking processes of DKB of California and vest the authority in the cadre of local officers letting them become an integral part of management.

We in the United States have and continue to have our eyes closed to the very favorable circumstances surrounding Japanese expatriates who enter into the United States and playing major parts in subsidiary corporation activities under existing "Merchant-Treaty Visa" laws. Perhaps this type of arrangement had some direct benefit from both governments in the past, but its advantage today clearly belongs to Japanese entities and their abilities to continually rotate senior management staff from their base for assignment to the United States resulting in a large degree of disregard for advancement to more senior positions by well qualified domestic U.S. managers.

Additionally, banking authorities are lax in their supervision and analyses of foreign financial institutions which operate as subsidiaries in our country to see that they comply fully with our laws.

Sufficient information is at hand that other Japanese-United States subsidiary banking operations have similar management deficiencies. Such practices will surely lead to more serious medium and long-term problems in discrimination, in employment, and in lending practices.

I need not remind this committee of the dismal banking situation in the United States currently. The facts outlined make matters all the worse. I thank you for your attentiveness.

[The prepared statement of Mr. Biniarz follows:]

TESTIMONY OF KARL JOACHIM BINIARZ TO THE HOUSE OF REPRESENTATIVES, 102 nd CONGRESS OF THE UNITED STATES OF AMERICA, COMMITTEE ON GOVERNMENT OPERATIONS, EMPLOYMENT AND HOUSING SUBCOMMITTEE. Rayburn House Office Building, Room B-349-A, Washington, D.C. 20515.

Hearing Room: Room 228, San Francisco City Hall, 400 Van Ness Ave. San Francisco, California. August 8, 1991 at 10:00 a.m.

I thank the Honorable Ladies and Gentlemen of the U.S. House of Representatives for the opportunity to appear before your Committee in order to give testimony specifically as it relates to the discrimination practiced by my former employer and which I either personally experienced or observed at the DAI-ICHI KANGYO BANK OF CALIFORNIA (hereafter referred to as DKB of California) or the Dai-Ichi Kangyo Bank Ltd. Agency in California.

My employment at DKB of California commenced Sept. 14, 1987 as Vice President and Manager of the bank's San Diego, California branch and was involuntatialy terminated when I was physically attacked by my direct supervisor on March 16, 1990. In my capacity as VP/Manager San Diego and within the authority supposedly delegated to me, I was to be in full charge of the branch's Business Development efforts for San Diego County. Although at the time of my employment I was led to believe that I had full authority for hirings, promotions and terminations, in reality even simple day to day matters such as operational ones were without authority whatsoever without checking with Personnel Department in the bank's Head Office, Los Angeles. The Head of Personnel in Los Angeles (a U.S. National) never made any decisions without prior to checking and receiving approval from her superior; a Japanese Expatriate National. The chairman who hired me for DKB of California was a Japanese Expatriate National. Official and non-officer staff we intended to hire for the San Diego Branch received the closest of scrutiny. I was informed th have a "proper profile" for a loan officer position. A Japanese Senior Executive of DKB of California instructed me that a proper profile meant "No Women or Blacks" for consideration. I was also informed by Japanese Officials of the bank after having hired two Filipino/Americans that it was "sort of given that Filipinos in general tend to be somewhat lazy". I took that to mean that hiring even Filipinos was inappropriate for the bank. I have attached a memo by a caucasian Senior Vice President of the bank written to Japanese Bank Officials corroborating my experiences with the bank.

I made recommendations for promotions in grade or new job responsibilities based upon gender to the bank. I made several recommendations to train one very competen female employee for an eventual loan officer position. The VP of Personnel continued to caution me on an irregular and intermittend basis that "She did not feel the bank would wish to entertain a female loan platform officer" and "I most probably was wasting my time and energy to do so".

It has been confirmed by deposition testimony under oath by a Senior Vice President (non-Japanese) that an executive search firm was called by a Japanese Expatriate Officer of DKB and told that candidates the search firm sends to interview should not be Blacks or Women.

As VP/Manager- San Diego Branch, I was on a pari-passus basis with three other branch managers of the bank. DKB of California operates only four branches in California. Yet, while three Japanese Expatriate Managers received a 13th and, indeed, a 14th salary and automatic bonuses, I did not receive similar remuneration; albeit, the turn-around performance of the unit I managed was the strongest of all branches. There was no basis or reason why such discriminatory treatment should exist in a U.S. subsidiary; differentiating between U.S. staff doing the same job as a Japanese Expatriate National. The reason given by the bank was that these managers "were under contract" from Japan and therefore the bank had to pay them stipulated salaries and bonuses whether they earned them or not.

The Expatriate Japanese Management's discriminatory employment practices included but were not limited to areas previously mentioned but more specifically involved absolute lack of authority for American Officers/Managers in their delegated authority; making them effectively "Ambassadors without Portfolio". As all decisions are basically made in a "group" and that group within DKB of California was limited to only Expatriate Japanese Management, DKB of California was run as if it was in fact, a domestic Japanese bank operating in Japan.

While employed with the bank, there was clear evidence that DKB of California in its business efforts within California made a conscious effort to evade its corporate responsibilities in connection with Community Re-investment Act ("CRA") compliance. The bank went so far as to remove the bank's yellow page advertise-

ment listing in Los Angeles so that it won't have to be bothered with what it considered worthless credit requests. Such requests of credit would include SBA loans, loans to minorities, concessionary interest rate loans to the local community and similar business opportunities. As part of my job I was informed to be in charge of CRA compliance for San Diego Branch. I was informed to cancel our yellow page advertising program which had been previously designed to effectively reach the minority and implement the CRA. I vehemently opposed this cancellation of racially biased lending by the bank to the Senior Credit Officer and Head of Planning of DKB of California; a Japanese Expatriate National. Thereafter I was retaliated against by the bank's constant scrutiny of loans submitted by my branch as compared to those submitted by Japanese Expatriate National Managers of other branches.

I have been asked to make recommendations to this committee on overcoming the problems I have experienced at DKB of California pertaining to discrimination in employment practices. Certainly the most important criteria is to fully integrate U.S. Nationals into the decision making processes of DKB of California and vest the authority in the cadre of local officers; letting them become an integral part of the management process for which they have been employed. The structure, format, and operation of DKB of California is so tightly controlled, it is in effect "Little Japan"; operating under the guise of legitimacy in this country, while in reality it is no more than a 100% Japanese Expatriate run banking operation, run exclusively to the benefit of Japanese employees to the exclusion of equal opportunity for non-Japanese employees. Until this is changed little can be done to prevent future wrongdoings of the kind I have experienced. Additionally, we in the United States have, and continue to have, our eyes closed to the very favorable circumstances surrounding Japanese Expatriates to enter into the United States and play major parts in subsidiary corporation activities in the U.S. under the existing "Merchant-Treaty Visa" law on our books vs. much more rigorous requirements we have for most other nations. Perhaps this type arrangement had some direct benefit for both governments in the past, but its advantage today clearly belongs to Japanese entities in their abilities to continually rotate senior management staff members from their home or other base for assignment to the U.S.; resulting in a large degree of disregard for advancement to more senior positions by well qualified domestic U.S. managers.

Additionally, banking authorities are lax in their supervision and analyses of foreign financial institutions which operate as subsidiaries in our country to see that such banks comply fully with our U.S. domestic laws; and, as it pertains in particular to Japanese banks situated in California. A former Superintendent of Banks for the State of California personally told me he felt that Japanese banks exercise such financial pressure and such a large scope of investment in California, that he felt "No one really wished to rock the boat at the State level too much". This I believe may exist at the National level as well. Sufficient information is at hand that other Japanese U.S. subsidiary banking operations have the same management deficiencies as were evidenced by my person at DKB of California. Such practices will surely lead to more serious medium and long term problems in discrimination in employment and lending practices. U.S. Executive Search firms have frequently commented that it is normal practice for many not to consider U.S. Nationals that work for Japanese banks for positions other than another Japanese employer. This is because it is known in the marketplace that the U.S. manager, after having been employed at a Japanese bank cannot be relied on for independent decision making abilities but instead probably has all the attributes of a "group" or consensus thinker. While this in itself is not necessarialy a negative quality, overall the entrepreneurial abilities most sought after probably have been dissipated. This single fact alone, if not curtailed, will substantially deplete the banking capabilities and national financial resources we must depend on to operate our day to day financial institutions in America. That, ladies and gentlemen is the crux of the matter.

Finally, I need not remind you of the dismal banking situation currently and the facts outlined makes matters all the worse.

I thank the committee for its attentiveness.

Karl G. Bünning

Mr. LANTOS. Thank you very much, Mr. Biniarz. Our next witness is Mr. Chet Mackentire, former Ricoh employee. Mr. Mackentire.

STATEMENT OF CHET MACKENTIRE, FORMER RICOH EMPLOYEE

Mr. MACKENTIRE. Thank you. Chairman Lantos, respected Members of Congress, support staff, fellow witnesses, members of the audience, and media representatives.

First, I would like to express my deepest respect and appreciation to all those responsible in these hearings. August 1991, will mark 3 years of my pursuit of justice through the highest levels of our U.S. Government regarding fair employment treatment of American workers on American soil.

The EEOC after a thorough investigation of my complaint established probable cause of discrimination, a violation of title 7. Less than 5 percent of all cases investigated by them are ever found in favor of the charging party. This was a significant accomplishment I think.

What happened? After working 15 years for several major leading technology United States corporations, Xerox, Wang, Intel, a European giant, N.V. Phillips, I went to work in August 1987 for Ricoh. This decision was made for three primary reasons:

(A) In nearly all the high technology sectors the United States and Europe have been losing to the Japanese.

(B) Considering the globalization of markets and Japanese strength in same I thought it best for my long-term career goals to go to work for a Japanese company and based upon prior reading in 1987 their treatment of employees is second to none.

In June 1988, 9 months later, feeling professionally raped, perhaps much like a woman being violated and having no control, I was terminated through a reduction in force. The basis was that they were losing money and getting out of the product area for which I was hired.

Within 1½ years of my exit they became No. 2, next to Sony, in the worldwide marketplace. This technology is used by the U.S. Army, the IRS, American Express, and a host of other applications. The company, Ricoh Corp., is a United States tentacle of Ricoh Co., Ltd. of Japan.

Particular details of my encounter with this multinational Japan-based conglomerate are as follows:

Recognizing them as a technology leader I responded to a newspaper ad in the San Jose Mercury News in late summer of 1987. The job title was "original equipment OEM sales manager." The job description later confirmed during interview and actual work performed was more of a business development manager. They needed someone to build from ground zero a business base in the United States for future products. The only problem was for an existing version product they had an exclusive U.S. agent, MAXTOR Corp.

At this time, late 1987, Ricoh needed an ear to the ground to get direct feedback regarding strategies necessary to compete. They had no Japanese nationals qualified to perform this task, so I believe I was hired. Apparently, they were quite impressed with my

qualifications as they agreed to pay me 40 percent more than the job slot allowed. With this increase it was still $10,000 less than I had made 2 years prior in a very similar situation.

I interviewed with the highest level of Japanese nationals in the San Jose office. During the interview with Mr. Itoh, then acting president, two key exchanges took place. I asked who had final approval on the budgets, Japan or the United States. He stated he did. Later it was learned this was not true, Japan controlled the pocketbook. The other exchange had to do with Japan bashing going on at that time, specifically Toshiba and their dealing with Russia. I explained I had much respect for the Japanese. Their success speaks for itself, and I felt much could be learned from each other.

Regarding representations made to me about the opportunity it was very clearly stated they were a very successful, wealthy company, had many new products coming. This was the department to be in as they were unique with a direct line back at Japan and a leader who was a key member of executive staff, somewhat like a godfather.

When asked about specific future career opportunities I was told by my soon to be Japanese national boss if I performed as advertised the following:

He would be going back to Japan and his job might be possible. Not true. Today, almost 4 years later, there have been three division heads, all have been Japanese nationals, and to my knowledge those positions have never been advertised in the United States anywhere.

According to testimony by company representatives nearly all division heads throughout their United States operations are Japanese nationals for two reasons. One, each division has profit and loss responsibility to the mother company in Japan; and two, they need division heads who they can rely on.

Additionally, when the Japanese were assigned here to the United States from the mother company, they are placed within the United States operation at the complete discretion of the Japanese parent. These nationals are not given a job classification according to the U.S. Base Personnel Policy Guidelines as their American counterparts. For job class pay scale they are given a JR rating, Japanese rep.

Another thing said to me was that since the company had many new products coming and is growing I might be able to get involved with these other technology areas.

Going in there were two flavors of products in the group I was assigned to, an older technology product, something like a Ford Edsel, a newer technology stealth, the 16 cylinder Ferrari. My boss said to me, "Go do it. Find a racetrack for this Ferrari. This is totally your responsibility. I have my hands full with the Edsel. Your results will speak for themselves." He stated I would have no involvement with the Edsel.

Within the next 4 months strategic plans were developed, major account opportunities put on the table, and critical product features suggested. In December 1987, a presentation was made to top management in Japan. In early 1988 additional presentations were made here in the States to top Japanese management.

About this time the Edsel continued having difficulty. Since it was assigned within the division I worked I asked about its relationship to my activity. My boss said, "Work harder. Your product is competitive." Top Japanese management stated at first they did not understand the complex information I had provided, then later acknowledged its accuracy and completeness. My immediate boss used to call me a walking encyclopedia.

It started becoming obvious there was something else happening in the background. I was getting very little feedback regarding the plan for my product. Then the Japanese started coming to the United States wanting to visit customers I had developed. At this time I had two promotions on an organizational chart with no change in pay. It wasn't clear what was going on. "Just work harder."

In April 1988, the beginning of Japan's fiscal year, a new work chart surfaced. It contained another promotion on one leg and a demotion on another. Another Japanese national appeared almost out of nowhere. I was to report to him on one leg of the chart and to my old boss on the other. And I was assigned responsibility for the Edsel.

Three months later, along with eight others, I was terminated for the above mentioned reasons. Nine months since my hire date, feeling professionally raped, my fiance had left stating I was working too hard, I had three promotions on the work chart with no increase in pay, and exited the company with exactly the same job classification and pay at which I entered.

The existing product offering strategy being orchestrated by the company can be identified in my work product of late 1987 and early 1988. One of the major reasons the company did not choose to go forward quite as quickly with the plans that I was presenting was perhaps partially due to concern about their exclusive U.S. agent, MAXTOR.

Had they done so it is not quite clear what might have happened. As documented in the testimony, Ricoh and the agent had a difference of opinion regarding their right to compete in the United States.

In the face of this the EEOC hearing and the pending lawsuit the company continued to carry out its plan. The same week of the notice of termination the Japanese nationals continued pursuit of business in this product area. Not only did they continue it, they proposed to one of the major account opportunities a method for going around the exclusive agent contract.

Within 6 months of my and others' termination the new Japanese boss was requesting five additional staff, within 6 months of my termination, one of which was specified as being supplied from Japan. No mention of rehire was ever offered to my knowledge to any of us. To the contrary, according to other former colleagues the company would not even respond to such inquiries.

Pursuing this arduous, time consuming, and emotional path of testing individual rights in the United States has been difficult. Family members, friends, neighbors, business colleagues, and media members, have expressed varying degrees of support, innermost valuable systems and deepest fears.

On the one hand is "How are you going to survive in the future if the lawsuit doesn't settle and now that most employers, especially the Japanese, know what problems you can cause?"

In the middle of those who feel employers, domestic and foreign, along with influence peddlers in Washington, lawyers and judges control system, my own lawyer advised against media exposure, his comment being, "They are bigger than you are." Depending on who has the biggest war chest full of money has the influence and control.

On the average there is a widespread disenchantment I believe with government, and the legal system, and the individual's ability to make a difference. This perspective was confirmed during my search for legal representation and the 1 year delay through the EEOC investigation. After interviewing several lawyers not one expressed a positive comment about my ability to prevail in the EEOC process.

During the decision of representation centered around the amount of potential recovery and not the issue of fairness or the harm caused to me.

Although the EEOC investigation was able to filter out the lies to them by the company and found not only probable cause but what could be a pattern. One statement, for example, from one Japanese rep to another was that "You are getting lazy like the Americans." Without formal legal counsel I——

Mr. LANTOS. Mr. Mackentire, could you try to wrap it up?

Mr. MACKENTIRE. Sure, I'm sorry.

Mr. LANTOS. Because we want to move on to your colleagues.

Mr. MACKENTIRE. Sure. This is it. Without formal legal counsel I defeated this action in the EEOC process. In addition, their main attorney in this case specialized and teaches his method to future college students I believe. It is a sad day when foreign based companies can enlist hired guns to defend their interest in American courts.

These practices only confirm our selling out, short-sightedness, and lack of nationalism necessary to protect future generations and livelihoods. Although the EEOC agreed with my charge of discrimination against this multinational conglomerate I am forced to seek fairness in a private party lawsuit, this being a Federal court trial.

Today, even with the EEOC findings, these congressional hearings and several pages of incriminating testimony by company representatives, it is not clear the existing law can properly address the unfair labor practices by the foreign based corporations.

Existing law was primarily found at protecting rights of minority classes in the U.S. workplace. This matter has to do with American born caucasians becoming the minority. I feel like a foreigner in my own land.

Again, thank you for the opportunity to shed some light on a very serious issue, a violation by the Japanese of American workplace rights as desired by our country's founding fathers.

Mr. LANTOS. Thank you very much, Mr. Mackentire. That really is the core of the issue here. Are American citizens becoming second-class citizens in their own country if they work for Japanese companies? I think you summed up the basic issue about it succinctly as I have heard it stated. I want to thank you.

Our next witness is Mr. John Piechota, former employee of Sanwa Bank. Your prepared statement will be entered into the record in its entirety, Mr. Piechota. You may proceed any way you choose.

STATEMENT OF JOHN L. PIECHOTA, FORMER EMPLOYEE, SANWA BANK

Mr. PIECHOTA. Thank you committee chairman and members.

From April 18, 1988, to August 31, 1990, I was employed by Sanwa Bank California. I was initially hired as manager of telecommunications, promoted to assistant vice president and manager of telecommunications, and finally promoted to assistant vice president and data processing services group manager.

I was responsible for all of Sanwa Bank California's voice and data communications at more than 100 sites for 3,500 employees. During my employment at Sanwa Bank California I implemented authorized projects that saved more than $6 million, I negotiated refund checks from vendors for more than $600,000, I managed 18 people; I was last rated a "1" in my performance review, and a "1" is the highest rating possible; I did not call in sick or miss a day of work in the last 2 years, and I worked 938 hours of authorized overtime for which the bank has not given me paid time off, as promised, nor have they paid me.

Also, at the time——

Mr. LANTOS. How much overtime did you put in?

Mr. PIECHOTA. 938 hours.

Mr. LANTOS. Uncompensated.

Mr. PIECHOTA. Right. I was promised paid time off and I planned to use it to go to graduate school. Also, at the time I was laid off Sanwa Bank did not pay me for my vacation pay, nor did they notify me of my "COBRA" benefits. Sanwa Bank California is owned by the Japanese bank, Sanwa, Ltd., which is the world's 5th largest bank and is the 12th largest corporation in the world ranked by assets.

During my employment at the bank Japanese management routinely discriminated against whites, blacks, and Hispanics. Examples of Japanese discrimination that I observed were:

Example No. 1, in January 1990, I hired a highly qualified black woman named Wanda Dixon for the position of telecommunications systems engineer. When I introduced her to Mr. Yoshitaka Ueno, he refused to shake her hand and left abruptly. I asked him about this behavior on another occasion and he just mumbled "Black woman . . . Black woman" and he was shaking his head back and forth.

Mr. LANTOS. Are you suggesting that Mr. Yoshitaka Ueno refused to shake hands with this lady, Wanda Dixon, because she was a black woman?

Mr. PIECHOTA. Oh, yes, he turned around and he reached his hand out and saw that she was black and jerked his hand back. Also, when I later talked to him at a dinner meeting he also told me that no woman would ever report to a Japanese national as a manager. And I go, "You can't do that in this country," and he

mumbled something about Japan and went on talking to another guy in Japanese.

Example No. 2, on several occasions I was physically shoved by Mr. Kanji Fujimoto. He also raised his hand as if he were going to strike me, but he never did. It is also my understanding from talking to Mr. Ed Langley, that he was punched by Mr. Kai Kase, a Japanese national. Personnel never did anything about this incident as Mr. Kase went back to Japan.

Example No. 3, once a week, all the Japanese would attend a late night meeting in the "D" level conference room. Sometimes they would adjourn the meeting chanting in Japanese and raising their fists in the air in unison. No whites, blacks, or Hispanics were allowed to attend these meetings, even though decisions were being made that would affect them. And generally the company would be reorganized.

Example No. 4, Mr. Yukio Harada would not let me take any technical seminars even though I clearly needed to take them to do my job. Mr. Harada always let similarly situated Japanese take technical seminars, anywhere, whenever. Mr. Harada even went so far as to cancel my technical seminars that were approved and paid for in the previous year.

Example No. 5, Sanwa Bank California has a company policy where they would pay a small portion of the tuition to go to graduate school, if an employee maintained a rating of 2 or better. I was rated a 1 which is the highest rating. Mr. Harada told my manager, Mr. Kurt Schneider, that he would not approve me going to graduate school, even though I was qualified. When I asked Mr. Schneider why the bank paid for Kimisuke Fujimoto's entire education at Stanford University and also donated $1 million to the university, he told me that "the Japanese have a job for life and we don't," and I believe he was referring to Americans.

Mr. LANTOS. Is that an actual quote?

Mr. PIECHOTA. Yes, yes. After he said that he tried to explain that the Japanese don't want to invest any money in educating Americans because we may quit and go work someplace else. That was his rationale for that.

Example No. 6, Japanese management was highly critical of me for not exclusively selecting Japanese manufacturers for telecommunications equipment. In the process for selecting a vendor for a multimillion dollar telecommunications network, Mr. Edward——

Mr. LANTOS. He was highly critical of you for not selecting exclusively Japanese products——

Mr. PIECHOTA. Right.

Mr. LANTOS [continuing]. For a company in the United States?

Mr. PIECHOTA. Correct.

Mr. LANTOS. OK.

Mr. PIECHOTA. In the process of selecting a vendor for a multimillion dollar telecommunications network, Mr. Edward Uemura yelled out in a meeting, "How come you always pick American?" and stormed out of the meeting.

Of the three vendors being considered two were Japanese and one was Canadian. The Canadian company had the highest performance and lowest monthly cost. I explained to Mr. Uemura that we had to do what is best for the company and not play politics. I

TESTIMONY OF JOHN L. PIECHOTA BEFORE THE EMPLOYMENT AND HOUSING SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS

CONGRESS OF THE UNITED STATES

AT SAN FRANCISCO CITY HALL ON AUGUST 8, 1991

TESTIMONY OF JOHN L. PIECHOTA

My name is John L. Piechota. From April 18, 1988 to August 31, 1990, I was employed by Sanwa Bank California. I was initially hired as Manager of Telecommunications, promoted to Assistant Vice President and Manager of Telecommunications, and finally promoted to Assistant Vice President and Data Processing Services Group Manager. I was responsible for all of Sanwa Bank California's voice and data communications at more than 100 sites for 3500 employees. During my employment at Sanwa Bank California, I implemented authorized projects that saved more than $6,000,000.00; I negotiated refund checks from vendors for more than $600,000.00; I managed 18 people; I was last rated a "1" in my performance review (A "1" is the highest rating possible); I did not call in sick or miss a day of work in the last two years; and I worked 938 hours of authorized overtime for which the Bank has not given me paid time off as promised, nor have they paid me. Also, at the time I was laid off, Sanwa Bank did not pay me for my vacation pay nor did they notify me of my "COBRA" benefits. Sanwa Bank California is owned by the Japanese Bank, Sanwa Bank LTD., which is the World's 5th largest Bank and is the 12th largest Corporation in the World, ranked by assets.

During my employment at the Bank, Japanese Management routinely discriminated against Whites, Blacks, and Hispanics. Examples of Japanese discrimination that I observed were:

EXAMPLE #1 - In January 1990, I hired a highly qualified Black Woman named Wanda Dixon for the position of Telecommunications Systems Engineer. When I introduced her to Mr. Yoshitaka Ueno, he refused to shake her hand and left abruptly. I asked him about this behavior on another occasion and he just mumbled "Black Woman.....Black Woman" while shaking his head back and forth.

EXAMPLE #2 - On several occasions, I was physically shoved by Mr. Kanji Fujimoto. He also raised his hand as if he were going to strike me, but never did. It is also my understanding from talking to Mr. Ed Langley, that he was punched by Mr. Kai Kase, a Japanese National. Personnel never did anything about this incident as Mr. Kase went back to Japan.

EXAMPLE #3 - Once a week, all the Japanese would attend a late night meeting in the "D" level conference room. Sometimes they would adjourn the meeting chanting in Japanese and raising their fists in the air in unison. No Whites, Blacks, or Hispanics were allowed to attend these meetings, even though decisions were being made that would affect them.

TESTIMONY OF JOHN L. PIECHOTA

EXAMPLE #4 - Mr. Yukio Harada would not let me take any technical seminars even thought I clearly needed to take them to do my job. Mr. Harada always let similarly situated Japanese take technical seminars. Mr. Harada even when so far as to cancel my technical seminars that were approved and paid for in the previous year.

EXAMPLE #5 - Sanwa Bank California had a company policy where they would pay a small portion of the tuition to go to graduate school, if an employee maintained a rating of 2 or better. I was rated a 1, which is the highest rating. Mr. Harada told my manager, Mr. Kurt Schneider that he would not approve me going to graduate school, even though I was qualified. When I asked Mr. Schneider why the Bank paid for Kimisuke Fujimoto's entire education at Stanford University and also donated $1 million dollars to the University, he told me that "the Japanese have a job for life, and we [Americans] don't." He tried to explain that the Japanese don't want to invest any money in educating Americans because we might go work someplace else.

EXAMPLE #6 - Japanese management was highly critical of me for not exclusively selecting Japanese manufacturers for Telecommunications equipment. In the process of selecting a vendor for a multi-million dollar Telecommunications Network, Mr. Edward Uemura yelled out in a meeting, "How come you always pick American?" and stormed out of the meeting. Of the three vendors being considered, two were Japanese, and one was Canadian. The Canadian company had the highest performance and lowest monthly cost. I explained to Mr. Uemura that we had to do what is best for the company and not play politics. It was after Mr. Uemura learned that the World's largest Corporation, Nippon Telegraph & Telephone, also used the Canadian manufacturer's equipment in Japan, that he accepted my recommendation. Mr. Yukio Harada, Mr. Uemura's successor, took exception to my recommendation and harassed me regarding it and later attempted to coerced me into quitting in order to avoid paying severance pay under the WARN Act.

On July 30, 1990, I was told by Mr. Harada that my position was one of twelve American positions being eliminated. Four weeks prior to this, Mr. Harada told me that I was incompetent and took away all my responsibilities in order to disgrace and humiliate me in front of my staff. Mr. Harada seemed to enjoy humiliating me. Mr. Harada only laid off White, Black, and Hispanic people, but did not lay off any Oriental people or Japanese Nationals. All of the people laid off were also over the age of 40. The day I was laid

off, I was not allowed to remove all of my personal property, I was not allowed to say good bye to anyone, and I was physically removed from the property under escort. Because of the way Mr. Harada handled my layoff, people were under the impression that I had been fired for dishonesty and have subsequently told prospective employers about this situation, which has made finding suitable employment impossible. At the time I was being laid off, I was told that it was due to economic reasons. As you can see from Sanwa Bank California's 1990 Annual Report, their profits more than doubled from the previous year, which is a record high since they formed the Bank in 1972. Also, stockholder equity increased by 19 percent. They also state in the Annual Report that the parent company, Sanwa Bank LTD., also had the highest profits in it's history, and had the second highest profits of any other bank in Japan. Just before I was laid off, the Bank purchased a home for $3.2 million dollars for Mr. Yoda, the Bank's President, and spent $400,000.00 to furnish it. Also in 1990, Sanwa Bank California moved it's headquarters to Sanwa Bank Plaza, a $300 million dollar building. As you can see, Sanwa Bank did not lay off people due to economic reasons.

Last year, I filed complaints with the 1.) Equal Employment Opportunity Commission (EEOC), 2.) The Department of Labor, 3.) The Department of Fair Employment and Housing of the State of California, and 4.) The Labor Standards Enforcement Department of the State of California. Despite numerous letters and phone calls to these agencies, they have done very little regarding my complaints. In some cases, these agencies have discouraged other employees of Sanwa Bank from filing complaints or have knowingly setup their interview appointments after the 300 day statute of limitations.

Please investigate Sanwa Bank's record on this matter and investigate the agencies that I have filed complaints with so that other White, Black, and Hispanic employees at Sanwa Bank will not have to suffer as I have.

Thank you,

John L. Piechota

RISK-BASED CAPITAL

1990 Capital Ratios of the Top 100 Commercial Banks

Top 100 banks in assets, listed in order of their equity capital, tier 1, and total capital ratios on Dec. 31, 1990

Equity Capital Ratio

Rank 1990		
1	Citibank (South Dakota) NA	11.52
2	Boston Safe Deposit & Trust Co.	9.00
3	Bank of America Arizona	8.83
4	Greenwood Trust Co.	8.78
5	Citibank (New York State)	8.45
6	Sanwa Bank California	8.42
7	First Union Nat'l Bank of Fla.	8.27
8	Trust Company Bank	8.22
9	First Alabama Bank	7.84
10	Mellon Bank (East) PSFS NA	7.79
11	Citizens Fidelity BATC	7.74
12	United States National Bank	7.68
13	Chase Manhattan Bank (USA)	7.84
14	AmSouth Bank NA	7.66
15	Republic National Bank	7.18
16	Seattle-First National Bank	7.04
17	Michigan National Bank	6.99
18	Wachovia Bank & Trust Co. NA	6.92
19	First Interstate Bk of Oregon NA	6.80
20	First National Bank, Atlanta	6.75
21	Security Pacific Bk Wash. NA	6.73
22	Citizens & Southern Nat'l Bank	6.56
23	Chase Lincoln First Bank NA	6.55
24	Continental Bank NA	6.47
25	Huntington National Bank	6.38
26	Banco Popular de Puerto Rico	6.38
27	Union Bank	6.33
28	First Florida Bank NA	6.33
29	Society National Bank	6.30
30	Texas Commerce Bank NA	6.28
31	Wells Fargo Bank NA	6.23
32	Shawmut Bank NA	6.21
33	South Carolina National Bank	6.18
34	National City Bank	6.15
35	U.S. Bank of Washington NA	6.10
36	Bank of California NA	6.06
37	Signet Bank/Virginia	6.01
38	BancOhio National Bank	5.97
39	National Westminster Bank NJ	5.95
40	Ameritrust Co. NA	5.94
41	NBD Bank NA	5.94
42	Harris Trust & Savings Bank	5.85
43	Sovran Bank NA	5.81
44	Connecticut National Bank	5.77
45	First Interstate Bk of California	5.72

Tier 1 Capital Ratio

Rank 1990		
1	Bank of America Arizona	23.80*
2	Republic National Bank	16.08
3	Bank of Hawaii	13.07
4	First Alabama Bank §	11.88
5	Boston Safe Deposit & Trust Co. §	10.77
6	State Street Bank & Trust Co. §	10.69
7	Southeast's National Bank	10.39
8	Mellon Bank (East) PSFS NA	10.03
9	Banco Popular de Puerto Rico	9.85
10	AmSouth Bank NA	9.64
11	South Carolina National Bank	9.36
12	First Interstate Bk of Arizona NA	9.09
13	Trust Company Bank	9.08
14	Citibank (New York State)	8.92
15	Sanwa Bank California	8.82
16	Greenwood Trust Co.	8.77
17	NCNB Texas National Bank	8.69
18	First Tennessee Bank NA	8.69
19	First National Bank, Atlanta	8.58
20	First Interstate Bk of Oregon NA §	8.56
21	Wachovia Bank & Trust Co. NA	8.48
22	Michigan National Bank	8.44
23	NCNB National Bank of Florida	8.42
24	Shawmut Bank NA	8.34
25	Signet Bank/Virginia	8.11
26	Citibank (South Dakota) NA	8.10
27	Huntington National Bank	8.08
28	Chase Manhattan Bank (USA)	8.00
29	Chase Lincoln First Bank NA	7.94
30	First Florida Bank NA	7.86
31	Bank One Texas NA	7.85
32	Connecticut National Bank	7.78
33	Citizens Fidelity BATC §	7.76
34	National City Bank	7.64
35	First National Bank of Maryland §	7.58
36	BancOhio National Bank	7.49
37	American Express Centurion Bank	7.46
38	First National Bank, Providence	7.39
39	Security Pacific Bk Wash. NA	7.38
40	First American Nat'l Bank	7.37
41	United States National Bank	7.36
42	Citizens & Southern NB, Fla.	7.32
43	U.S.B./Hutchinson's	7.32
44	Valley National Bank	7.31
45	NBD Bank NA	7.30

Total Capital Ratio

Rank 1990		
1	Bank of America Arizona	23.80*
2	Republic National Bank	17.32
3	Bank of Hawaii	15.24
4	Banco Popular de Puerto Rico	12.77
5	First Alabama Bank §	12.71
6	First Tennessee Bank NA	12.26
7	Sanwa Bank California	11.99
8	Mellon Bank (East) PSFS NA	11.98
9	Boston Safe Deposit & Trust Co. §	11.68
10	Southeast's National Bank	11.53
11	State Street Bank & Trust Co. §	11.43
12	Signet Bank/Virginia	10.70
13	South Carolina National Bank	10.48
14	Bank of California NA	10.31
15	AmSouth Bank NA	10.26
16	Greenwood Trust Co.	10.29
17	NCNB Texas National Bank	10.09
18	Trust Company Bank	10.02
19	First Interstate Bk of Arizona NA	9.97
20	Union Bank	9.95
21	Michigan National Bank	9.89
22	First Interstate Bk of Oregon NA §	9.81
23	Seattle-First National Bank §	9.73
24	Security Pacific Bk Wash. NA	9.71
25	First National Bank, Atlanta	9.58
26	Citibank (South Dakota) NA	9.55
27	Shawmut Bank NA	9.50
28	Huntington National Bank	9.41
29	First Florida Bank NA	9.36
30	Wachovia Bank & Trust Co. NA	9.27
31	Shawmut Bank NA	9.26
32	Citizens Fidelity BATC §	9.24
33	First National Bank of Maryland §	9.23
34	Morgan Guaranty Trust Co.	9.23
35	First National Bank, Providence	9.22
36	Citibank (New York State)	9.21
37	Bank One Texas NA	9.17
38	American Express Centurion Bank	9.06
39	U.S.B./Hutchinson's	9.06
40	First Fidelity Bank NA	9.05
41	First American Nat'l Bank	8.90
42	NCNB National Bank of Florida	8.89
43	CoreStates Bank, NA	8.84
44	Bankers Trust Co. §	8.83
45	Crocker Bank	8.82

THE SANWA BANK, LIMITED

For the fiscal year ended March 31, 1990, The Sanwa Bank, Limited, ranked among the five largest banks in the world based on assets, made significant gains in performance despite increases in market interest rates and other unfavorable developments in the operating environment. The bank was placed second in terms of business profit among all Japanese banks. Net income amounted to $1,028 million, representing the highest level recorded in the bank's history.

Over the coming three years, The Sanwa Bank has set an objective of continuing to build on its capabilities in commercial and investment banking to become the most innovative and strongest among the world's leading universal banks. Under a new medium-term plan called Universal Project II, the bank will increase its emphasis on responding quickly and flexibly to changes in financial markets and on working to upgrade and expand the range of services it offers to meet the broader and more sophisticated requirements of its customers.

In the United States, the bank maintains a strong presence with five branches, two agencies and three representative offices, as well as subsidiaries such as Sanwa Bank California, Sanwa Business Credit Corporation, Sanwa Bank Trust Company of New York, and Sanwa-BGK Securities Co., L.P.

North American Network

Branches
New York
Boston
Chicago
Los Angeles
San Francisco

Agencies
Atlanta
Dallas

Representative Offices
Cleveland
Houston
Lexington
Toronto

Wholly-Owned Subsidiaries
Sanwa Bank California
Sanwa Bank Canada
Sanwa Business Credit Corporation
Sanwa Bank Trust Company of New York

Limited Partnerships
Sanwa-BGK Securities Co., L.P.
New York
TENCO, L.P.
Chicago

Worldwide
Over 380 locations in Japan and throughout the world

Mr. LANTOS. Thank you very much, Mr. Piechota. I very much appreciate your testimony. You wrote me a letter not long ago.

Mr. PIECHOTA. Correct.

Mr. LANTOS. And I wonder if you will allow me to read that letter.

Mr. PIECHOTA. Go ahead.

Mr. LANTOS. I should read this letter because it is typical of large numbers of communications we have received from across the country from obviously very well educated, very serious, very hard working, very thoughtful individuals, similar to the ladies and gentlemen who are testifying here today. They are crying out in anguish. They are crying out in anguish as American citizens discriminated against in their own country. This is the letter:

Dear Congressman Lantos:

Please assist me in resolving the following problem. From April, 1988, to August 31, 1990, I was employed by Sanwa Bank California as Assistant Vice-President and Data Processing Services Group Manager. I was responsible for all of Sanwa Bank California's voice and data communications at more than 100 sites for 3500 employees. Sanwa Bank California is owned by the Japanese bank, Sanwa Bank, Ltd., which is the world's 5th largest bank and is the 12th largest corporation in the world ranked by assets.

During my employment at the bank I was routinely discriminated against by the Japanese management. Oriental employees and Japanese nationals were paid more and were granted greater benefits and promotions than whites, blacks and Hispanics. I was told by my supervisors, "the Japanese have a job for life and we [Americans] don't."

On July 30, 1990, I was told by Mr. Yuki Harada, Senior Vice-President, that my position was 1 of 12 American positions being eliminated. Mr. Harada only laid off white, black and hispanic people, but did not lay off any oriental people or Japanese Nationals. All of the people laid off were also over the age of 40.

Last year I filed a complaint with the Equal Employment Opportunity Commission and was assigned Complaint Number [et cetera]. Other employees have been assigned various complaint numbers.

Despite numerous letters to the EEOC I have not had the courtesy of a response. Please investigate this matter on my behalf and let me know of your findings. Thank you for your courtesy, cooperation, personal attention to this matter. Sincerely yours, Mr. John Piechota.

We will pursue this matter with the EEOC.

Mr. PIECHOTA. I appreciate it.

Mr. LANTOS. A letter is on its way to the Chairman of the EEOC and we will see to it that within a week both you and we will get an answer.

Mr. PIECHOTA. Thank you.

Mr. LANTOS. Our last witness on this panel is Ms. Pearl M'Coy, also former employee of Sanwa Bank. We are pleased to have you, Ms. M'Coy. Your prepared statement will be entered into the record in its entirety and you may proceed in any way you choose.

STATEMENT OF PEARL M'COY, FORMER EMPLOYEE, SANWA BANK

Ms. M'COY. Thank you, sir. I am a former employee of Sanwa Bank. I worked for the bank for 18 months. While I was there I was the assistant vice president of data processing for the deposit system which grossed $5.5 billion a year in deposits.

A number of things happened to me while I was at the bank. I was laid off at the same time that John Piechota was laid off and I

was told that it was basically that profits were bad for that year. Of course, that wasn't the reason.

While I was at the bank, I was told by one of the Japanese managers that the reason that blacks couldn't get ahead in America was because we were lazy, and that was basically all there was to it. I was told that I should understand the humor of the Sambo dolls that they have in Japan. I didn't understand the humor.

While I was in meetings I would have a discussion and I would be totally ignored; another conversation would start in the middle. It was very difficult.

When I first was laid off from Sanwa Bank, I took it personally. I thought that I had done something wrong. I couldn't leave my house. I couldn't take care of my daily chores. Until I spoke to John who pointed out that what happened to me had also happened to a group of people, but we were all separated so we didn't know that. I started to think this was discrimination, and I too have filed with the EEOC and I haven't heard anything either, but——

Mr. LANTOS. When did you file, may I ask, approximately?

Ms. M'COY. In January.

Mr. LANTOS. January.

Ms. M'COY. January of this year.

Mr. LANTOS. And you have not yet heard.

Ms. M'COY. I did get a letter back saying that if I wanted to get an attorney I could, but that was basically all that I got back from them.

I worked for the bank 12 or 14 hour days. I worked an average of three weekends a month. I went 16 months without vacation, and when I took my vacation I was told that I was lazy, and why did I take my complete vacation. I still accepted responsibility for being laid off. I do hope that you do something. I mean, I am employed now and I am fine, but I do hope that you do something.

Mr. LANTOS. Thank you very much, Ms. M'Coy. Before we go to questions, the Chair would like to state that at our hearing 2 weeks ago we had another highly impressive panel. The composition was somewhat different. I think we had a majority of women, we had some of the most articulate, qualified, competent people that this subcommittee has ever had testifying before it.

There was very little doubt in my mind that I would have been pleased to have any of the people who testified before us in Washington work in my office if I had a job relevant to their qualifications. They were very impressive people.

Unidentified INDIVIDUAL. Excuse me, Mr. Chairman.

Mr. LANTOS. This is not a——

Unidentified INDIVIDUAL. Will the public be allowed to ask you any questions?

Mr. LANTOS. No, sir, this is a congressional hearing.

Unidentified INDIVIDUAL. I thank you very much.

Mr. LANTOS. You are welcome. We are happy to have you as a guest, but——

Unidentified INDIVIDUAL. Thank you very much.

Mr. LANTOS [continuing]. This is not a town meeting.

The panel was equally impressive this morning, and what emerges is a very distressing picture. It is a picture of American citizens being discriminated against in their own country.

As we did last time, here too we are giving the opportunity for the companies to present their case. Some have done so at our last hearing. Some will do so at our third hearing in Washington, DC.

Let me begin the questioning with you, Mr. Horton. Now, you are in the unusual position of having filed a lawsuit and still working for the company. Have there been any noticeable changes in your job situation since you filed suit against your employer?

Mr. HORTON. There is the expected level of tension, but, no, sir.

Mr. LANTOS. You described a system of shadow employees. When a Japanese national is in a parallel position, you basically report to that person. Is this an effective method placing what you called a glass ceiling on promotions for U.S. nationals?

Mr. HORTON. It is my understanding that that benefits Japan's management in that they can control the flow of information. It seems to me that information or communication is very much a one-way street. Information flows from here to Japan; however, from Toyota Motor Corp. to Toyota Technical Center it is quite filtered by the time it gets to the American staff. I think that is the function or part of the reasoning and the rationale for having coordinators or shadow Japanese managers.

Mr. LANTOS. Would you describe the treatment of U.S. citizens who were women at the company?

Mr. HORTON. Toyota Technical Center is a California corporation. It was incorporated in 1977. From that time to this time, today, in assistant management position or management position there has been no Afro-American, there has been no Hispanic, and until recently, in the last year and a half or so, there have been no women in assistant management positions or management positions.

Mr. LANTOS. How would you describe, Mr. McDannald, the role of women in the company you were affiliated with?

Mr. MCDANNALD. Well, there weren't that many women there that were in any kind of a managerial position at all. There were perhaps up to four or five that I recall that were female. The president's secretary was a white woman who was in my view nothing more than a carrier of tea, and she seemed to enjoy it, so I guess that was all right.

I think by and large the Japanese within NEC ignored the women that I saw. I don't feel they felt they were worthwhile even talking about most of the time.

Mr. LANTOS. Mr. Mackentire, did you have any experience in observing American women in the employ of the company?

Mr. MACKENTIRE. This is an interesting question because one of the excuses or one of the defenses the company is raising in my case is the fact that my job responsibilities, a very junior person, only a few years in the business. So, in this case it was an opportunity for her to get a broader exposure.

So, she looks at this, like a lot of young people do, as an advancement and the company is taking care of her, however she is still very naive as to higher management positions because she had just entered the work force. There were some secretaries—I shouldn't use that term—but with the executive management older women

working as tea providers, but generally speaking there were no women that I saw at any executive levels or management positions in the corporation.

I don't know where this comment came from, but I am going to make it anyhow, but I think a comment was made to me about their hierarchy. The hierarchy in the Japanese corporation is Japanese nationals, expatriate Japanese males, Americans in general, and then women, American women, and Japanese expatriates who were females may even be lower than that.

Mr. LANTOS. Would it be fair to say that Japanese companies treat their American subsidiaries as a sort of a farm team? Anybody care to comment? Mr. Piechota?

Mr. PIECHOTA. Yes, it seems like a lot of Japanese are kind of rotated through the company and go back, you were there like 6 to 8 years. I myself had to train a lot of Japanese and also Japanese from other companies like Nippon Telegraph & Telephone in what the American market looks like.

Mr. LANTOS. Congressman Shays.

Mr. MACKENTIRE. May I make a comment on that?

Mr. LANTOS. Please.

Mr. MACKENTIRE. There is a very clear pattern that I have seen established, at least in the company I worked for and also other Japanese companies that I was going to work for after Ricoh, and that being the pattern is very, very consistent. They will bring into what they consider key management positions that cannot be filled by Japanese nationals at present an American executive, and then they will put a shadow employee next to him and keep them long enough until they can get whatever information they need, and then 2 or 3 years, whatever, later that position will be neutralized or for some reason or another the employee will feel that he is not performing or whatever.

I would like to make one more statement regarding the treatment, this gentleman to the left of me, about how he is being treated regarding when he worked for a Japanese company. I happen to know business colleagues who are still working for these companies and have experienced exactly the same thing I was experiencing. The problem, Mr. Lantos and committee members, is that some of these people have wives and families, and this is your source of bread and butter. You know, nobody wants to stand up because what are you going to do? The unemployment rate is very, very high. The Japanese have taken over at least the technology sector, major employment opportunities. So, you have no recourse.

For example, I went and applied for a job with Sony the first part of this year at two levels down from my previous job. There were over 100 candidates for that position, 100 candidates, and I didn't even get an interview. The job was paying less than what it would have paid 2 or 3 years previously. So, what is happening of course is there is a whole reduction or degradation in income levels.

Mr. LANTOS. We understand. Congressman Shays.

Mr. SHAYS. Thank you, Mr. Chairman. I would just like to say to the witnesses that you do not paint a pretty picture for an American working for a Japanese firm, at least the firms you worked for. If you know our chairman, you know this is not an issue that we

will just listen to and go on to something else. So, I am convinced that we are going to learn a great deal more in the months and maybe even years to come, and hopefully we will be able to have some impact.

I find it very bizarre, Mr. Horton—I mean, this in a positive way, but it is amazing to think that you work for a company in which you have a major dispute. But I found your testimony extraordinarily helpful, and I appreciate your being here. I would like to think that these hearings will also serve to awaken the management of some of these Japanese companies to reexamine how they do their work.

I would just conclude by saying obviously discrimination hurts the individual, but it shortchanges the company because they don't get the best and the brightest to work for them.

I will conclude by saying that as a Member of Congress I am going to devote a good deal of my time to pursuing this issue. The reason why I don't have questions for you is I think you have laid out your statements well. We do, I think, need to focus on the employers and to give them an opportunity to tell us how they approach what they do.

I would also conclude just for the record if I might that it is a very difficult thing to know if someone is discriminated against or simply has not performed according to the standards that need to be performed. For the most part I found your testimony extraordinarily compelling and persuasive, and it has given me an added interest in pursuing this issue.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much, Congressman Shays, and I want to thank all members of the panel.

Our next witness is Mr. Len Biermann, Deputy Director, Office of Federal Contract Compliance Programs. Before we begin the next panel the subcommittee will stand in recess for 5 minutes.

[Recess taken.]

Mr. LANTOS. The subcommittee will resume its hearing. Our next panel is comprised of Mr. Len Biermann, Deputy Director of the Office of Federal Contract Compliance Programs, and Region IX Director for the agency, Ms. Helene Haase. We are pleased to have you. If you will please rise and raise your right hand.

[Witnesses sworn.]

Mr. LANTOS. We are pleased to have both of you. Mr. Biermann, we appreciate your return engagement. You testified before us in Washington, and I raised a number of questions, and I take it some of the issues that are contained in your testimony really related to my questions at our last hearing.

As with all of our witnesses, your prepared statement will be entered in the record in its entirety. I would appreciate it if you would summarize your oral testimony so Congressman Shays and I may get to the questions. You may proceed any way you choose.

STATEMENT OF LEONARD J. BIERMANN, DEPUTY DIRECTOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY HELENE HAASE, REGIONAL DIRECTOR

Mr. BIERMANN. Thank you, Mr. Chairman. Distinguished chairman, members of the subcommittee, ladies and gentlemen, I am Len Biermann, the Deputy Director of the Office of Federal Contract Compliance Programs in the Equal Employment Standards Administration of the U.S. Department of Labor.

With me today is Helene Haase, the Regional Director of OFCCP for the San Francisco region which covers the States of Arizona, California, Hawaii, and Nevada, and also covers Guam. Ms. Haase is new to this office in San Francisco having been the Deputy Regional Director in the Atlanta region until moving here in May of this year.

Mr. Chairman, in my prepared testimony——

Mr. LANTOS. You will find that San Francisco is not a hardship post, Ms. Haase, so we welcome you.

Mr. BIERMANN. I think she has already found that out, Mr. Chairman. Nothing but smiles when I come here. I have in my prepared testimony an outline as to what the OFCCP does and what our charter is generally. I will skip that—it was in my previous testimony—in order to get to the issues that we raised in the last hearing.

Mr. LANTOS. We appreciate that.

Mr. BIERMANN. You had asked, Mr. Chairman, that we address the question of foreign ownership and how we schedule our compliance reviews. Last year we reviewed about 6,000 establishments, we investigated 1,295 complaints, and we obtained $34.7 million in financial settlements for individuals who had been the victims of discrimination.

I have to add with some pride, Mr. Chairman, that within the last 2 years the amounts of financial settlements we obtained in our office has been the highest since the consolidation of the program in 1978 when the various constituent agencies were merged into the Department of Labor, and we are very proud of that.

Mr. LANTOS. Well, I want to commend you, but may I ask a question so we are clear about the scope of your responsibility? The Office of Federal Contract Compliance deals with companies that have Federal contracts, is that correct?

Mr. BIERMANN. Yes, sir.

Mr. LANTOS. So, any company, U.S. owned or foreign owned, that has no Federal contracts would not come under you purview, is that correct?

Mr. BIERMANN. That is correct.

Mr. LANTOS. So, in terms of, for instance, the companies who were represented today by former employees or current employees—I don't know if you were in the room or not—would you tell us which of these companies would have come under your jurisdiction? Is Toyota Technical Center one of those?

Mr. BIERMANN. Mr. Chairman, we have not been able to identify that Toyota Motor Co. has a Government contract. We are still at-

tempting to do that. They do, of course, have a joint venture with General Motors, and there is a legal question as to whether or not the nexus of that joint venture would extend to Toyota Corp. and make them——

Mr. LANTOS. OK, how about NEC?

Mr. BIERMANN. NEC is a Government contractor. Most banks doing business in the United States are Government contractors through the insurance of deposits. I know we have done a compliance review in the past of Sanwa Bank and they are clearly a Government contractor.

Mr. LANTOS. Yes.

Mr. BIERMANN. I would assume Dai-Ichi Kangyo Bank is also, although we have no record of having conducted a review of that.

Mr. LANTOS. OK.

Mr. BIERMANN. And Ricoh is a Government contractor.

Mr. LANTOS. Thank you very much.

Mr. BIERMANN. Sure.

Mr. LANTOS. And what is the dollar amount which is the cutoff point for your inspection or your involvement?

Mr. BIERMANN. To be subject to the Executive order generally a contractor has to have contracts totaling $10,000. To be subject to the requirements to develop an affirmative action plan they have to have a single contract of $50,000 and 50 or more employees corporatewide.

Mr. LANTOS. Thank you.

Mr. BIERMANN. I should mention the method that we use to conduct compliance reviews. To comply with constitutional prohibitions against unreasonable search and seizure the courts have required OFCCP to insure that selection of contractors for a review be based on the neutral nonarbitrary system. OFCCP employs a computer-generated system using the EEO-1 report as the data base.

These forms, jointly developed and administered by the OFCCP and Equal Employment Opportunity Commission, are used to collect employment data from private employers by sex according to five race and ethnic categories, cross classified by nine broad job categories.

Foreign ownership is not identified on these forms and has not been a factor determining these selections. Further, foreign ownership has no bearing on coverage under the Executive order or related laws.

OFCCP conducts investigations, or as we call them compliance reviews, of firms employing fewer minorities or women than their peers in the same industry and geographical area, regardless of ownership.

Now, in addition, Mr. Chairman, to asking our office to provide you with information on the number of companies under jurisdiction, there are 16,000 companies subject to the Executive order with 94,000 separate establishments, and that is just in the nonconstruction area. We are also responsible for about 125,000 or more construction contractors and subcontractors.

You asked us to identify the number of those companies under our jurisdiction which were 100 percent owned by foreign interests, and of those foreign owned companies which contractors were Jap-

anese subsidiaries or Japanese owned, and similar data for those Japanese companies in the State of California.

Since we received your request we have spent considerable time searching sources to try and find the information you requested.

Unfortunately, Mr. Chairman, either the information that has been collected by the other Federal agencies could not legally be released to us, or was not in computer data format. Consequently, this would have required extensive personnel time to cross compare printed, hard copy data with those companies in our contractor files. Additionally, other agencies do not classify foreign ownership by percent or differentiate between companies completely foreign-owned or those partially owned by foreigners.

What we did, however, in order to give you a snapshot picture of some companies, was to take a list compiled by Forbes Magazine in its July 22, 1991, edition of the 100 largest foreign investments in the United States.

We did a manual search of these 100 companies against our national list of 16,000 Federal contractors and 94,000 establishments, and here is what we found:

One, of the 100 largest foreign owned investments in the United States 85 of those companies are 100 percent foreign owned.

Two, of these 85 companies 61 corporations, or 71.8 percent, representing 71 different establishments, were identified in our Federal contractor files as being required to have affirmative action plans. That is, they had a $50,000 contract or more.

Three, of these, six corporations with seven facilities were cited by Forbes Magazine as being Japanese-owned.

For your information, we have included a complete list and attachment to my testimony.

In addition, we analyzed the compliance review closure documents for 19 Japanese-owned companies located in California. These were manually searched and identified from compliance reviews conducted in the State of California between 1988 and 1991.

I would like to caution the subcommittee, sir, that 19 companies out of 94,000 Federal establishments under our jurisdiction is not a valid statistical sample from which to make any comparative analysis. However, we will do our best to provide your subcommittee with the information we do have at hand.

Three of the Japanese-owned companies, or 16 percent of the sample, were found to have no violations and received notices of compliance. For the same time period, an average of 19 percent of all the California contractors reviewed received notices of compliance.

Letters of commitment were signed by 26 percent of the Japanese-owned contractors reviewed. I should mention in passing that a letter of commitment is entered into by a contractor for generally minor violations of the Executive order program. During the same time period 45 percent of all California contractors reviewed resolved violations through signing letters of commitment.

Conciliation agreements, as I mentioned in my testimony 2 weeks ago are used for more serious violations, either serious omissions in the affirmative action plan or findings of discrimination. Eleven of the nineteen Japanese-owned contractors reviewed, or 58 percent, were closed by conciliation agreements.

Three of the above conciliation agreements reflected resolutions of significant issues of discrimination. The remaining contractors——

Mr. LANTOS. Could you tell us what those were?

Mr. BIERMANN. Yes, sir. In the appendix B which I have attached to my testimony there is a table that talks about each of these findings, gives the name of the company, and the type of closure document.

You will see that a conciliation agreement on page 1 of that appendix addresses Siemen's Solar Industries in Carmarillo, CA. They had a incomplete affirmative action plan, they didn't follow the AAP that they had developed, and they didn't take affirmative action in their recruitment and hiring.

There was no financial settlement involved, and that apparently there was no victims found a discrimination in the course of that compliance review.

There was also a conciliation agreement with Noritsu American Corp. of Buena Park, CA, failure to update an affirmative action plan, failure to adequately carry out their affirmative action plan.

There was a conciliation agreement with Mitsubishi Electronics of America, failure to incorporate proper recordkeeping of their AAP, failure to properly audit their goals and job group analysis, and the recruitment of minorities and women in underutilized job areas was insufficient.

There was a settlement of $77,501 for five individuals entered into with the Tokai Bank of California in Los Angeles, CA, disparate treatment in salaries of females versus males in selected job categories.

There was a CA with the Sumitomo Bank of California, deficiencies in their AAP and recruitment of women was insufficient.

There was a conciliation agreement with Mitsubishi Cement Corp. in Lucerene Valley, failure to file timely, complete, and accurate EEO reports, lack of a major job group analysis, failure to maintain applicant flow data as required by the regulations.

Mr. LANTOS. Well, if I may stop you on Mitsubishi.

Mr. BIERMANN. Yes.

Mr. LANTOS. Lack of major job group analysis, failure to maintain applicant flow data, that is precisely the core of our hearing, isn't it?

Mr. BIERMANN. Yes, sir.

Mr. LANTOS. I mean, it is self-evident that Mitsubishi is not going to import Japanese citizens to do their janitorial work, so if we lump together all of the janitorial employees and all the lower level employees in both clerical and nonclerical positions with top executive positions and then make judgments as to whether in fact there is discrimination against United States citizens we are dealing with a nonsense data base because all employees are lumped together.

And if 80 percent of the employees of a company happen to be United States citizens and 20 percent happen to be Japanese citizens, we really have no idea what happens to American citizens as they aspire to obtain executive, professional, or managerial positions.

So, it seems to me that your very helpful study on the basis of the enormously meager data base that you provided us with is the justification for my announcement earlier this morning for a GAO study that will in fact look into these issues. If a company employs 1,000 employees in California, Japanese-owned companies, and 900 of those are United States citizens and 100 of them are Japanese citizens, and we haven't got a clue, as is clear in this case, "lack of major job group analysis," then we don't know what kinds of jobs these various people fill. There is no way to deal except on an anecdotal basis with the core concern of this subcommittee. Would you agree with that, Mr. Biermann?

Mr. BIERMANN. Yes, sir, I would. If the affirmative action plan doesn't properly represent minorities and women in appropriate job groups then the affirmative action plan cannot do what it is intended to do, and that is to develop a basis for an outreach and promotion program to insure that minorities and women reach nontraditional levels.

Mr. LANTOS. But you see there is a new wrinkle here which is really the focus of my concern. All of your activities historically, and I want to commend you for many useful things you and your folks have done, related to the concept of whether women or ethnic minorities are being treated fairly, is that correct?

Mr. BIERMANN. Yes, sir.

Mr. LANTOS. Have you ever dealt with the issue prior to our hearing as to whether U.S. citizens are being treated fairly in companies operating within the United States?

Mr. BIERMANN. No, and I think the reason for that is we don't have a——

Mr. LANTOS. I am not blaming you. I just want to get this on the record.

Mr. BIERMANN. That is right.

Mr. LANTOS. Because the legislation, congressional concern and executive department concern, and the judiciary's concern, related to the issue of discrimination vis-a-vis women, discrimination vis-a-vis various groups on the basis of ethnicity, national origin, and other such items.

It never occurred to the legislature, the U.S. Congress, to the executive branch, or to our judiciary, that there is a whole new category of job discrimination that we are now dealing with.

It never occurred to anybody because on the face of it just describing this new phenomenon is so absurd and so preposterous that nobody ever planned to deal with it, namely, discrimination against U.S. citizens by companies operating in the United States.

The assumption was that U.S. citizens, if anything, had preferential treatment vis-a-vis noncitizens, not the opposite. So, what we are dealing with here is something new under the Sun, and the reason why, and I want to be sure you understand this—I am saying this in no sense critically—the reason why your data base and all the data bases we have looked at is so meager and nonhelpful is because nobody ever bothered to ask the question which is "Are United States citizens discriminated against for being United States citizens working in the United States for companies that make their money in the United States?"

That is the mindboggling, preposterous absurdity that we are dealing with, that if you are an American citizen in the United States, there are companies in the United States making money, selling their goods, while discriminating against American citizens right here in California. That is the issue. And we haven't got the tools to deal with the issue and this committee is determined to develop those tools.

It would be like assuming, you know, that up until now all questions of discrimination related to ethnic criteria, and then suddenly somebody thought well maybe there is another criteria, maybe women are discriminated against, too, once in a while in some places, and we say, "Well, are companies discriminating against women?" and we say, "We don't know because we don't have those data."

Well, we are at that point now with respect to all U.S. citizens, men, women, whites, blacks, Hispanics, you name it. The basis of the discrimination is the fact that they carry U.S. citizenship.

Is this a fair summary of where we are?

Mr. BIERMANN. I think it fairly summarizes the testimony that we have heard today, Mr. Chairman.

Mr. LANTOS. Go ahead, Mr. Biermann.

Mr. BIERMANN. Let me just point out a little about the contractors again. While the affirmative action rate and the violation rate for affirmative action of these 19 companies is slightly higher that found among all contractors in California, 84 percent for Japanese firms compared for 75 percent for the State of California, our unsophisticated snapshot, and again a very narrow one, has not proven that Japanese companies necessarily will discriminate more against those protected by the Executive order, today at least, than those without foreign investment.

In the appendix I have, as I said, included a breakout of those 19 Japanese firms. And, Mr. Chairman, we have additional data. It is a very short little summary of our findings in those 19 companies should you or your staff or other members of the committee need more information about the 19 companies.

Mr. LANTOS. We would appreciate obtaining that.

Mr. BIERMANN. We will certainly be responsive to your request. That concludes my formal comments, Mr. Chairman. I, along with the Regional Director from this region, Helene Haase, will be glad to answer any other questions you might have.

[The prepared statement of Mr. Biermann follows:]

Testimony of

Leonard J. Biermann
Deputy Director
Office of Federal Contract Compliance Programs
Employment Standards Administration
U.S. Department of Labor

before the

Subcommittee On Employment and Housing
of the
Committee On Government Operations
U.S. House of Representatives

Thursday, August 8, 1991
10 a.m.
Room 228 - San Francisco City Hall
San Francisco, California

Distinguished Chairman, Members of the Subcommittee, Ladies and Gentlemen, I am Leonard J. Biermann, Deputy Director of the Office of Federal Contract Compliance Programs (OFCCP) in the Employment Standards Administration of the U.S. Department of Labor.

With me today is Helene Haase, the regional director of OFCCP for the San Francisco Region which covers the states of Arizona, California, Hawaii and Nevada, and Guam. Ms. Haase is new to this office having been the deputy regional director in the Atlanta Region until moving here in May of this year.

The OFCCP is responsible for making sure that all companies doing business with the Federal Government provide equal employment opportunity without regard to race, sex, color, religion, national origin, disability, Vietnam era or disabled veteran status.

Individual complaints filed under the Executive Order are, by a Memorandum of Understanding, referred to the Equal Employment Opportunity Commission. Individual complaints handled by OFCCP are those which allege discrimination based on disabilities filed under Section 503 of the Rehabilitation Act of 1973, and those alleging discrimination based on Vietnam veterans status filed under the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

Our office also requires contractors to take affirmative action by making good faith efforts to recruit qualified workers from all segments of the workforce, and to provide training and advancement opportunities for all employees.

There are more than 16,000 companies with some 94,000 establishments, not including those participating in the construction industry, which are contractors to the Federal government and required to have Affirmative Action Plans. In addition, there are approximately 150,000 construction contractors and sub-contractors.

The OFCCP annually conducts 6,000 compliance reviews of federal contractors. Where major violations of the regulations are found, a resolution usually is obtained with a Conciliation Agreement, a document binding the contractor to fully correct the problem. Less substantive issues are resolved through Letters of Commitment, a similar-type document but less formal. Ultimately, contractors who do not comply may be debarred from federal work and their current contracts cancelled. However, the law always allows the contractor to remedy the violation or to have an opportunity for a hearing before any debarment. I should note, Mr. Chairman, that almost always the contractor complies with its obligations and remedies the violations prior to being debarred.

Last year we reviewed 6,033 establishments, investigated 1,295 complaints and obtained $34.7 million in financial settlements for individuals who had been discriminated against. Incidently, Mr. Chairman, in each of the last two years we have obtained the largest amounts of financial settlements since consolidation of the program in 1978, when the staff and budgets of individual contracting agencies which enforced the Executive Order were transferred to the Department of Labor.

To comply with constitutional prohibitions against unreasonable search and seizure, the courts have required OFCCP to ensure that selection of contractors for review be based on a neutral, non-arbitrary system. OFCCP employs a computer generated system using the EEO-1 report as the data base. These forms, jointly developed and administered by the OFCCP and Equal Employment Opportunity Commission, are used to collect employment data from private employers by sex according to five race and ethnic categories, cross classified by nine broad job categories. Foreign ownership is not identified on these forms, and has not been a factor in determining these selections. Further, foreign ownership has no bearing on coverage under the Executive Order or related laws. OFCCP conducts investigations (reviews) of firms employing fewer minorities or women than their peers in the same industry and geographical area, regardless of ownership.

In addition to asking our office to provide you with information on the number of companies under our jurisdiction, you also asked us to:

1. Identify the number of those companies under our jurisdiction which were 100 percent owned by foreign interests, and

2. Of those foreign-owned companies, which contractors were Japanese subsidiaries or Japanese owned, and

3. Those Japanese companies which are based in California.

Since receiving your request, Mr. Chairman, we have spent considerable time searching sources to try and find the information you requested.

Unfortunately, Mr. Chairman, either the information that has been collected by the other federal agencies could not legally be released to us, or was not in a computer data format. Consequently, this would have required extensive personnel time to cross compare printed, hard copy data with those companies in our federal contractor files. Additionally, other agencies do not classify foreign ownership by percent or differentiate between companies completely foreign owned or those partially owned by foreigners.

What we did, however, in order to give you a snapshot picture of some companies, was to take a list compiled by Forbes Magazine in its July 22, 1991 edition, of the 100 largest foreign investments in the U.S.

We did a manual search of these 100 companies against our national list of 16,000 federal contractors and 94,000 establishments. Here is what we found:

1. Of the 100 largest foreign-owned investments in the U.S., 85 of these companies are 100 percent foreign-owned.

2. Of these 85 companies, 61 corporations, or 71.8 percent, representing 71 different establishments, were identified in our federal contractor files as being required to have Affirmative Action Plans.

3. Of these, 6 corporations with 7 facilities were cited by Forbes Magazine as being Japanese-owned.

For your information, we have included the complete list as Appendix A.

In addition, we analyzed the compliance review closure documents for 19 Japanese-owned companies located in California. These were manually searched and identified from compliance reviews conducted in the state of California between 1988 and 1991.

We caution the Subcommittee, however, that 19 companies out of 94,000 federal establishments under our jurisdiction is not a valid statistical sample from which to make any comparative analysis. However, we will do our best to provide your Subcommittee with the information we have at hand.

Three of the Japanese-owned companies, or 16 percent of the sample, were found to have no violations and received Notices of Compliance. For the same time period, an average of 19 percent of all of the California contractors reviewed received Notices of Compliance.

Letters of Commitment were signed by five, or 26 percent of the Japanese-owned contractors reviewed. During the same time period, 45 percent of all California contractors reviewed resolved violations through signing Letters of Commitment.

Eleven of the 19 Japanese-owned contractors reviewed, or 58 percent, were closed with Conciliation Agreements.

Three of the above mentioned Conciliation Agreements reflected resolutions of significant issues of discrimination. The remaining contractors signing Conciliation Agreements were cited for serious affirmative action violations. The three cases with discrimination issues resulted in financial settlements of $107,645 for 11 individuals.

While the affirmative action deficiency rate for these nineteen companies (84%) is slightly higher than that found among all contractors in California (75%), our unsophisticated snapshot has not proven that Japanese companies discriminate more than do those without foreign investment.

As Appendix B to the testimony we have included a breakout of the 19 Japanese-owned companies that we have reported on today.

That concludes my formal remarks. Mr. Chairman, I would be pleased to respond to any questions you or other members of the subcommittee may have.

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APPENDIX A

Foreign-Owned Federal Contractors in the U.S.

from the

Forbes Magazine "Top 100" Foreign Companies in the U.S.

United Kingdom	21	29.6
Germany	11	15.5%
Canada	9	12.7%
France	7	9.9%
JAPAN	7	9.9%
Switzerland	5	7.0%
The Netherlands	3	4.2%
Australia	2	2.8%

Hong Kong, Italy, Luxembourg, Panama, Sweden and Venezuela each had one or 1.4%.

APPENDIX B (Page 1 of 5)

COMPANY	LOCATION	DATE REVIEWED	FINDINGS	FINANCIAL SETTLEMENT	CLOSURE DOCUMENT
Siemens Solar Industries	Camarillo, CA	12-06-90	Incomplete affirmative action plan (AAP) Incomplete adherance to AAP Recruitment and hiring in race/color, sex	0	Conciliation Agreement
Yamaha Motor Corp.	Cypress, CA	03-09-90	No violations	0	Notice of Compliance
Fujitsu America, Inc.	San Jose, CA	02-15-90	Dissemination of AAP Incomplete recordkeeping workforce analysis and reporting system	0	Letter of Commitment
California First Bank	San Francisco, CA	01-10-89	AAP Hiring of minorities: Blacks and Hispanics	0	Letter of Commitment
Noritsu America Corp.	Buena Park, CA	10-10-89	Failure to update AAP annually Lack of adequate affirmative action plan	0	Conciliation Agreement

COMPANY	LOCATION	DATE REVIEWED	FINDINGS	FINANCIAL SETTLEMENT	CLOSURE DOCUMENT
Mitsubishi Electronics of America	Torrance, CA	04-27-88	Incomplete recordkeeping AAP, internal audit goals, job group analysis Recruitment of minorities and women in under utilized areas	0	Conciliation Agreement
Yokai Bank of California	Los Angeles, CA	04-18-88	Incomplete reporting - AAP Disparate treatment in salary of females vs. males in selected job titles	$77,501 (5 individuals)	Conciliation Agreement
Hitco	Gardena, CA	05-11-88	Inadequate dissemination of AAP to Supervisors	0	Letter of Commitment
Sumitomo Bank of California	San Francisco, CA	03-13-87	Deficiencies in AAP Recruitment of women in management positions	0	Conciliation Agreement
JFC International	San Francisco, CA	12-04-87	Incomplete AAP goals and reporting	0	Letter of Commitment
Samwa Bank	San Francisco, CA	02-29-88	Failure to compile and maintain accurate applicant flow data	0	Letter of Commitment

Mitsubishi Cement Corporation	Lucerne Valley, CA	10-21-90	Failure to file timely, complete and accurate EEO-1 reports Lack of major job group analysis Failure to maintain applicant flow data	0	Conciliation Agreement
Nihon-Kodon America	Irvine, CA	06-17-91	Failure to annually update the AAP plan Inappropriate designation of job groups Failure to maintain applicant flow statistics Recruitment of qualified handicapped individuals	0	Conciliation Agreement
Daihatsu America, Inc.	Los Alamitos, CA	03-29-91	No violation	0	Notice of Compliance
Xantek, Inc.	Vista, CA	11-20-90	Discrimination against Black applicants Dissemination of EEO policy/AAP Inappropriate internal audit and reporting systems	$24,477.00 (five individuals)	Conciliation Agreement

Ricoh Electronics, Inc.	Tustin, CA	12-07-89	Lack of affirmative action plan AAP recordkeeping, reporting and dissemination of policy Inadequate outreach program	0	Conciliation Agreement
Hyundai Electronics America	San Jose, CA	01-24-91	In compliance	0	Notice of Compliance
Fujitsu Microelectronics Division	San Diego, CA	05-10-91	Hiring and promotion in race/color and sex Lack of affirmative action	$5,667 affecting one individual	Conciliation Agreement

Ricoh Corp.	San Jose, CA	12-12-88	Failure to update prior year's AAP Failure to formally disseminate EEO Policy Recordkeeping -support data including applicant flow data and rejection ratios Deficiencies in internal audit and reporting system	6	Conciliation Agreement

Mr. LANTOS. Well, thank you very much, and let me begin the questioning by asking a few very basic questions. You fundamentally depend on records submitted by companies, is that correct?

Mr. BIERMANN. Initially, yes, sir. When we conduct a compliance investigation, that selection is made based upon EEO–1 data which is submitted by each company. Before we go onsite and conduct a compliance review, we first obtain from the company their affirmative action plan, which is of course a lot more elaborate, much more defined breakout of their employment into much smaller job groups. Then after analyzing that plan we then go onsite and collect data personally from the contractor's files.

But the initial selection of the contractors is based solely on data submitted by the company. Now, I should say one other thing about that, sir, and that is that we do investigate complaints. As I mentioned 2 weeks ago, the complaints that are individual in nature are referred to EEOC. But we do accept complaints and investigate those that allege general practices of a large nature, pattern and practice, systemic allegations and so forth.

I would just like to say that if there are employees who are working for companies which are Government contractors that believe that such a pattern and practice of discrimination exists at those firms, if they would file a charge with the OFCCP we would certainly investigate that charge.

So, it is not that we only do compliance reviews based upon the EEO–1 report. We are responsive to pattern and practice charges and do conduct full investigations.

Mr. LANTOS. But obviously the very prevalent pattern of intimidation does prevent large numbers of people that feel that there is discrimination from filing such complaints because they are afraid of retribution.

Mr. BIERMANN. Yes, sir, I am sure that is true.

Mr. LANTOS. Now, what is the mechanism you use? Let me ask you, Ms. Haase, to deal with the question of appropriate classification. For instance, what prevents me from classifying someone as an executive assistant when in fact it is a very, very low level job?

Ms. HAASE. Initially, nothing would prevent you from reporting that in your affirmative action program, but as a part of the compliance review process we receive detailed breakouts of job titles with pay rates and makeups by race and sex. We routinely review that to see if there are apparent discrepancies.

So, if someone was, for instance, classified as a vice president of administration but they were paid on an hourly basis at a low rate that would immediately leap out and the investigator would look into it. They do routinely review job position descriptions and compare them with salary and content of the job if anything in the analysis brings it to their attention.

And it is a very detailed analysis and we very often do require contractors—we don't require them to change the name of their job, but for affirmative action plan purposes we would require them to put them in the correct job category for analysis.

Mr. LANTOS. Well, I think you are correct with respect to such blatant attempts to circumvent the law. If you call me executive vice president and I make the minimum wage, then there is a red flag which is hoisted and you say, "Well, the executive vice presi-

dent should be doing a little better than making the minimum wage." I understand that.

But we are dealing with highly sophisticated companies with high-powered attorneys, and public relations consultants, and human resources consultants, who have learned the technique of sort of going as far as is humanly possible in deliberately misclassifying. What mechanisms do you have for dealing with those kinds of attempts to manipulate reality?

Ms. HAASE. Well, clearly, I gave an extreme example, but we would probably detect many more subtle examples. In addition, we routinely interview various members of the work forces that we review, and we could detect from interviewing people.

We would not be able to prevent if the person were afraid to bring to our attention that there was a discrepancy. We might not detect it, but we do have interviews, we do have job descriptions, and various personnel records to look at.

So, if there is any clue that there is a problem we would probably pick up on it. It is possible that something like that could pass unnoticed in the review.

Mr. LANTOS. On the previous panel one of our witnesses, Mr. Piechota, told us that I believe in January he said he filed with your office as well as with EEOC and heard nothing. I am not expecting to know all of the cases in your office without being given advance notice. But assuming that the statements were accurate, is this a typical timelag or do you think it could have just fallen through the cracks?

Ms. HAASE. No, it is not a typical timelag. We normally respond right away with acknowledgment that we have received the complaint. If there were a problem of establishing coverage or jurisdiction, there could be a delay before we actually started the investigation. Did he work for a bank?

Mr. LANTOS. He worked for a bank.

Ms. HAASE. He worked for a known contractor so he should have received some response. I would have to of course check our records.

Mr. LANTOS. I understand that. Could you do that and submit your findings for the record?

Ms. HAASE. The other thing that could have happened is if he submitted an individual complaint, we would have declined to investigate it. We normally refer those complaints to the EEOC who does the investigation. And likewise, we would not accept an individual complaint that had also been filed with EEOC and they were already doing an investigation. So, he may have received a response that we were referring his complaint to the EEOC. If he received no response, certainly it is an error on our part.

Mr. LANTOS. OK. Congressman Shays.

Mr. SHAYS. The more we get into this issue the more difficult it seems to be to get accurate information so as to know if there is in fact discrimination in Japanese firms or English firms or French firms as it relates to the hiring of Americans in the United States.

I was troubled by a comment you made because I heard it quite often in the Labor Department that it is difficult to obtain information from one unit of the Labor Department to another. Quite often it is used as proprietary information. For instance, OSHA some-

times can't get statistics that they want from other units within the Labor Department. What kinds of information can't you get that may be available in our Government, but just another part of our Government?

Mr. BIERMANN. I have a survey in more particulars that we have done in the Department of Labor in attempt to get additional information. Let me get to that very quickly here for you.

Mr. SHAYS. I just want an example of the kind of information that we might have right now, but you can't get your hands on it.

Mr. BIERMANN. Bear with me for just a minute and I can answer your question.

Mr. SHAYS. All right. Ms. Haase, maybe I could ask you a question while he is looking. I am wondering if we are to single out one foreign-owned company with one ethnic group or one nationality, if we have the ability to do that. It would seem to me in fact that what we would want to do is determine if there was discrimination by any foreign firm against American citizens. Are you aware of any study ever being done?

Ms. HAASE. To the best of my knowledge we have never done such a study.

Mr. LANTOS. OK. Any luck there?

Mr. BIERMANN. Yes, I have it here for you, Congressman. The Bureau of Labor Statistics does have data. BLS developed a list of foreign-owned firms in the United States.

Under what I understand is the law, International Investment Trade and Services Survey Act and the Foreign Direct Investment and International Financial Data Improvement Act of 1990, these data are only accessible to BLS and the Census Department and Commerce. The data is available only confidentially, and so when we went to the BLS we were not able to access it.

There is additional data with the U.S. International Trade Commission. It is very manually intensive. It lists companies by name, plant location, parent company, percent share, new or acquired product line, employees, year opened, but the format is hard copy only and it is incompatible to any data base we have. We would have to cross reference manually to our 94,000 establishments to find if they were Government contractors or not.

There is the data at the Bureau of Economic Analysis. BEA publishes annually a survey of current businesses which include statistics of employment of foreign held U.S. businesses arranged by parent company, industry sector, and by the State of the United States in which it is. The most recent is 1988.

It is 10 percent foreign held or more, so we don't know which ones are 100 percent or which ones are considerably less, and does not list company names, can't release the names by law. Again, it is restricted by the International Investment Trade and Services Survey Act.

There are data available from the International Trade Administration——

Mr. SHAYS. You have given me an idea.

Mr. BIERMANN. And so forth. So, those are the kinds of places we went to try and find the additional data that the committee asked for and we weren't able to successfully cross reference those data with our contractor list.

Mr. SHAYS. You know, I am struck by the fact that whenever we deal with Japanese companies, it is amazing what happens in Washington. You get a call from this lobbyist, you get a call from that lobbyist. I have this feeling that the Japanese firms in America are hiring the best and brightest American lobbyists to make their case heard and they do it very effectively.

I will candidly say that I think it is going to be more difficult to try to get this information than we reckon with because there will be a lot of lobbyists who are going to try to portray this in a very unfriendly way. Yet I just think we are going to have to do it.

Mr. Chairman, I don't have any other questions.

Mr. LANTOS. Thank you, Congressman Shays. I do have one question which stems from what I detect from two answers I got from the two of you to the same question, so correct me if I am wrong. As I was listening to you, Mr. Biermann, you said you sort of invited individuals to complain if they feel they have been discriminated against. Am I correct?

Mr. BIERMANN. Well, of course. But if the complaint is individual in nature, we would send it to EEOC. It will be investigated by EEOC. Now, I don't know what their timeframe is, but it will be investigated. If it is a pattern and practice charge, then it will be investigated by us in the form of a compliance review.

We would get that charge. If there is a charge for instance made that there is a Japanese company that is not promoting women into management, or is not promoting Anglo-American citizens into management, and that this is systemic, and it is not a complaint filed in behalf of one person or one specific act of discrimination, then we would conduct a review of that issue and find out whether or not that firm was complying with the Executive order.

So, there is relief for those individuals who want to use the advantage of the Executive order. The only thing we don't do is investigate individual charges of one individual being fired for lack of performance and there is an allegation that firing took place because of race or gender as an example, but if there is a general charge made under the Executive order, then we schedule that company for a compliance review.

The only exception to that may be if the identical charge has just been investigated in a recent compliance review, it would not be appropriate to investigate it over again.

Mr. LANTOS. But may I ask this, you indicated that you refer these individual complaints to the EEOC; correct?

Ms. HAASE. Yes, that is correct.

Mr. LANTOS. Now, what mechanism is there with an EEOC off picking up a variety of individual complaints which if put together clearly reflect a pattern of discrimination?

Mr. BIERMANN. Well, one of the systems that we use for scheduling companies for compliance review in addition to the EEDS system that we talked about 2 weeks ago, is that the district director of each of our offices has the authority that if there are a number of complaints individual in nature being filed against the same company and those according to the memorandum of understanding with the EEOC are sent to the Commission for investigation.

But if we see that there is such a pattern, then that is an appropriate neutral, legitimate basis for scheduling that company for a compliance review, even though they may not appear on our normal selection system as proper for such a compliance review.

So, there is that amount of discretion that a district director has given a pattern of charges being made against a contractor.

Mr. LANTOS. What triggers in your office the notion that there is a pattern here and not just individual complaints?

Ms. HAASE. It would have to be perceived by the managers of the offices where the complaints are filed, or in my office. If we were intaking the complaint, we may notice that there is a large number of complaints, or in some cases employees of the companies contact us and say they are concerned, and this employee's concern together with the record of whether complaints have been filed would cause us to take a closer look at the company.

Mr. LANTOS. How many regions do you have in your operation?

Mr. BIERMANN. Ten.

Mr. LANTOS. Ten regions. Now, what is the degree of information sharing among the 10 regions? Suppose I am an employee of Sanwa Bank, and I send a complaint to you that there is discrimination against me as a woman, and there is another office someplace else which receives a similar complaint, and another office elsewhere in the country. Is there a central pool where these complaints are evaluated in terms of the pattern of frequency so that you would have an indication that you are dealing with systemic discrimination?

Ms. HAASE. Within the region we receive——

Mr. LANTOS. No, interregionally, not within the region.

Ms. HAASE. Right, I will address those. But, no, interregionally there is not.

Mr. LANTOS. Now, that is a very serious flaw because you are dealing with some companies which are operating all over the country, and if you have individual complaints of individual women in various parts of the country all of these are handled as individual complaints, shipped over to the EEOC, and your district directors don't communicate with one another, when in fact we may well have a pattern of discrimination on our hands. You at present time are not equipped to deal with it.

Mr. BIERMANN. No, you are right, Mr. Chairman, and you have identified something that we have also at OFCCP, and that is that we have the ability to interact within the region from one district office to another because the data base is kept regionally. There is also a national data base, but it not analyzed for selection of contractor purposes.

What we need to put in place when funding is available is a selection system so that the data bases are interchangeable, so that there is a network relationship between the 10 regions, so that trends and patterns that may exist in one can be identified in another.

It is also very helpful in selecting contractors for compliance review because quite often in our program we have found the same company may be reviewed in 10 regions, if not at the same time, very closely to that, and it would be helpful if we could establish a network of relations between our regions.

Mr. LANTOS. The previous panel had two individuals, Mr. John Piechota and Ms. Pearl M'Coy, both of them former Sanwa Bank employees. They both testified that there were 12 U.S. citizens discharged by Sanwa Bank at the same time, no Japanese national was laid off at the same time. Would this constitute a pattern?

Ms. HAASE. If those 12 people joined together to file a class complaint, we would investigate it as a pattern.

Mr. LANTOS. Well, that is a tall order. I mean, those 12 people are unemployed now. They are crawling all over the country looking for jobs. Don't set targets which are by definition impossible to obtain.

I am asking a very simple question. You now heard testimony before a congressional committee under oath by two individuals working for the same company saying that they were fired and they viewed this as pattern of discrimination because there were 10 other United States citizens fired by the same company, no Japanese national.

This was given under oath. They don't know where the other 10 people are. These are little people. Have some mercy on them. They are all over the country. They are unemployed. They are looking for a way to pay for the milk for their children. So, don't force them to come together as a group of 12 and hire a high-powered law firm charging them $300 an hour to mount this. They won't do that. Our job in Government is to protect the weak. That is our job. So, don't set standards which are impossible to obtain.

Ms. HAASE. I didn't mean to imply that all 12 of them would have to find——

Mr. LANTOS. Well, we now have two. Is that enough?

Ms. HAASE. If two signed and there was an indication that there was pattern, we would look at it as a pattern. If one person signed, if one person had a complaint, we probably would not. But if we knew that there were more than one, even though not all of them had signed——

Mr. LANTOS. Well, now you know. There are 2 and they claim that there are 12. Will you pursue this?

Ms. HAASE. It would be appropriate for them to file an official complaint.

Mr. LANTOS. They did.

Ms. HAASE. They did?

Mr. LANTOS. That was Mr. Piechota's testimony.

Ms. HAASE. Well, I——

Mr. LANTOS. Since it was an individual complaint, you bumped it out to the EEOC.

Ms. HAASE. You know, I will have to research our records and see the complaint.

Mr. LANTOS. Your answer gives me very little comfort, very little comfort.

Ms. HAASE. I apologize for that, Mr. Chairman, but it is not our intent——

Mr. LANTOS. It is not a question of apologizing for it. I am concerned about individuals who on the basis of the superficial evidence are discriminated against because they are U.S. citizens, they are fired not because they are lousy employees—I was very much impressed by these people—but they are fired because they

are U.S. citizens, and they complained to you, and you buck it over to the Equal Employment Opportunity Commission. There are 2 of them and the 2 of them say there are 12 of them.

What is the mechanism? I mean, let's not get into a game where the individual cannot deal with Sanwa Bank or Mitsubishi. We know that. That is why they need help. It is your job and my job to give them the help.

Ms. HAASE. Clearly that is the case and we would be happy to do that.

Mr. LANTOS. But we can't have a congressional hearing for every case. You must have a mechanism in place that sees to it that these people are protected, that their rights are protected. I don't see that mechanism.

Mr. BIERMANN. Well, I think there is, Mr. Chairman. In the instant case at the bank I am sure that based upon the testimony today if we have not recently conducted a compliance review of that particular bank and they are a Government contractor, as you say I would see no reason why a compliance review should not be conducted in a reasonable period of time as we can schedule it. I will make that commitment to you, sir.

As far as the general selection method, we do review the complaints that are received within the region. If there are a pattern of complaints that are filed in the region against a contractor, those are noted and compliance reviews are conducted from that basis.

About 15 percent of the reviews that we conduct each year are what we call reviews based on discretion of the district director; in other words, not off the EED system. That is based upon complaints, community interest, new plant, recent layoffs, whatever the concern might be, as long as it is neutral and not arbitrary.

The thing we don't do, and 1 day we want to do, is to be able to communicate those kinds of data from region to region so that the selection system can be based upon national data rather than just regional data.

But I am not at all sure that lacking complaint information in the district office nationally would have a very great impact on the selection process, because we conduct compliance reviews of establishments; we don't do corporatewide investigations. If there is a pattern against a particular bank within a region then we will certainly do an investigation of that bank.

It will be very helpful to have a national computer network system, but I am not entirely convinced that it would have a very big impact on the selection system itself because I think the complaint process pretty well can be analyzed on a local basis.

But as far as the testimony today, certainly, if there is information given to the Government that indicates there may be a pattern of discrimination at a Government contractor establishment and we haven't been there recently, that ought to be a consideration that the district director uses in making a selection.

Mr. LANTOS. Congressman Shays.

Mr. SHAYS. Let me just ask you this question. I get a little uneasy when I hear that it would be nice if the funding were available. What I really want to know is if you think it would be helpful

and important are you actually making a request that the funds be made available?

Mr. BIERMANN. Well, we have a lot of different priorities, Congressman. That is one of them, but we have others too. We are doing this in steps. The first thing we had to do before we could worry about a national network was to spend a lot of money on computers in all of our district offices.

We initially set up a target that every one of our district offices, and there are 47 of them, have computers equal to one computer per module, or three computers per district office. That was a very substantial investment.

We have gone through that process for the last 3 years. We are now at the point where hardware is in place, and certainly the next step now is to spend the additional funds to network those computers. So, it is not a matter of not having the funds 2 years ago or being turned down for it. It was a matter of doing it in steps so we could put the hardware in place and then go ahead with the next process. We are going to do that.

But as I say, there are other priorities too and you know better than I that there is only so many pieces of the pie that can be cut and distributed, and we are trying to do the best——

Mr. SHAYS. No, I do know that, but I sit as a Congressman and I get uncomfortable when Congress says to the executive branch, "You are not doing this," and then we find that Congress hasn't allocated funds that should have been made available. But I am finding all too often that the request is not made.

It seems to me that you have every right to turn to your superiors and they have every right to turn to Congress and say, "This is what we need to do the job you want us to do, and if you don't do that we are not going to be able to do the job." I am just curious if you think you have gone that step of letting the funding organization, which is Congress, know what your needs are.

Mr. BIERMANN. Well, I think we have and I think we have been funded, Congressman. As I say, the moneys that we have spent over the last 2 or 3 years on hardware and software for the district and regional offices around the country has been quite substantial.

We have come considerably far from where we were just 5 years ago. I am quite satisfied that the progress made has been good. There are other things yet to do and those will come in future funding years.

I am not at all of the view that what we have done insofar as purchases of the kinds of equipment our offices need to do their work has been less than what it should have been. We have been pretty vigorous in that area.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. LANTOS. Well, I want to thank both of your for your testimony. Let me just say that I want to assure you that this subcommittee will give you all the help that you can possibly get from us, but we in turn would want you to be as vigorous in your pursuit of all of these issues as I know you want to be.

Let me also say that I hope you take back to Washington, Mr. Biermann, the notion that perhaps we have discovered a whole new arena of possible people who are being discriminated against—these people are called U.S. citizens—which has not been your

focus. You have assumed that they are not discriminated against, but these hearing reveal that that assumption is presumably no longer accurate. I thank you both.

Mr. BIERMANN. Thank you.

Ms. HAASE. Thank you.

Mr. LANTOS. Our next panel is Mr. Kunishiro Saito, president of NEC Electronics, Mr. Ryusaburo Wada, president and chief executive officer of Dai-Ichi Kangyo Bank, and Mr. K. Tomita, vice president of Toyota Technical Center. Would you please rise and raise your right hand?

[Witnesses sworn.]

Mr. LANTOS. Since we have many more people than we have invited, we are happy to have all of you, I want to make sure I know with whom we are dealing. So, I would like to begin at that end of the table and would you kindly identify yourself so we will know exactly who is who? Are you a witness?

Unidentified INDIVIDUAL. I am not, Mr. Chairman.

Mr. LANTOS. OK. Go ahead. Could we begin with you, sir?

Mr. TOMITA. My name is Kazuo Tomita.

Mr. LANTOS. You are vice president of Toyota Technical Center?

Mr. TOMITA. Yes, Mr. Chairman.

Mr. LANTOS. And you are?

Mr. LOEB. Mr. Chairman, my name is Hamilton Loeb. I am the attorney for Toyota Technical Center.

Mr. WADA. My name is Ryusaburo Wada, president of Dai-Ichi Kangyo Bank of California.

Ms. CORMIER. My name is Linda Cormier. I am vice president and head of human resources for Dai-Ichi Kangyo Bank of California.

Mr. GIOVANOLA. My name is John Giovanola. I am administrative vice president for NEC Electronics.

Mr. WILES. My name is Alexander Wiles. I am counsel to NEC Electronics.

Mr. SAITO. My name is Kunishiro Saito, president of NEC Electronics.

Ms. ISHIKAWA. My name is Michiko Ishikawa, freelance interpreter helping Mr. Saito to understand today's proceeding.

Mr. LANTOS. Very good. I would like to ask you to try to sit down because you are blocking the view for the people behind you. You will get your chance to come up whenever you are needed. If any of you would like to take off your coats to be more comfortable, you are most welcome to do so. Let me first welcome all of you. Let me state for the record that you are all appearing voluntarily. We appreciate your presence.

Let me also reiterate a portion of what I said at the outset, that I have a longstanding, and very deep, and very genuine appreciation, not only for our own Japanese-American community, but for Japan as a country and as a culture, having visited Japan on numerous occasions beginning in 1956, having established the first study abroad program at Wasata University in the 1960's for American students, early 1960's, and being of the view that Japanese investment in the United States on balance is a helpful phenomenon.

Let me also indicate at the outset that I am quite certain that many of the problems that we have heard testimony about do

relate to cultural differences, deep-seated cultural differences, but that of course is no excuse with respect to full compliance with our laws. People may discriminate because they choose to discriminate, and people may discriminate because that is part of their cultural pattern. Neither is acceptable under American law. So, we are not here probing motivation. We are looking at a very simple fact, as to whether companies that enjoy the privilege of operating within the United States are in full compliance, not just token compliance, not just minimal symbolic compliance, but in full compliance with the laws of this Nation.

We will place all of your prepared statements in the record in their entirety. Since Congressman Shays will have to catch a plane before too long for Connecticut and I am very anxious that he be part of this full hearing, we will ask you to summarize extremely briefly your prepared testimony as it relates to the concern of this committee.

In our hearing in Washington we had several of the companies testifying, submitting very lengthy prepared statements, which we were happy to accept for the record, but we asked them not to read lengthy statements about company history, company functions, and the reiteration of sort of desirable objectives.

We are dealing here with a series of very serious concerns, concerns expressed by American citizens under oath relating to their view that Japanese-owned companies engaged in systematic discrimination against them as individuals and against them as members of various groups, women and various minorities. But in all instances we are dealing with discrimination against U.S. citizens as such.

I would also like to say that in the event any of you, ladies and gentlemen, require assistance with an interpreter we will give you all the opportunity to consult with your interpreter. We appreciate the fact that you are testifying not in your native language. I have been struggling with that problem for years. Let me just say that we will be very sympathetic to linguistic difficulties.

We will begin with you, Mr. Kunishiro Saito, president of NEC Electronics. I would like to ask you not to read your prepared statement. We will place it in the record. If you would like to come directly to the questions, we will give you that opportunity. To reassure you, your prepared statement is entered into the record in its entirety.

Mr. WILES. Mr. Saito has approximately a 5-minute presentation which addresses the issues that you wanted him to address.

Mr. LANTOS. I would be very happy to give him the opportunity to read the statement if it addresses specifically the issues.

Mr. WILES. It does.

Mr. LANTOS. Please.

STATEMENT OF KUNISHIRO SAITO, PRESIDENT, NEC ELECTRONICS, INC., ACCOMPANIED BY JOHN T. GIOVANOLA, VICE PRESIDENT, ADMINISTRATION; AND ALEXANDER WILES, ESQUIRE, COUNSEL

Mr. SAITO. I have prepared a statement, but I would like to only read the part that is related to your hearing.

Good afternoon. On behalf of NEC Electronics I am pleased to have the opportunity to appear before the hearing. My name is Kunishiro Saito, and I am president of NEC Electronics.

NEC Electronics is a wholly owned subsidiary of NEC Corp. which is headquartered in Tokyo, Japan.

NEC Corp. is an international electronics company that manufactures over 15,000 different products marketed in more than 140 countries. NEC has 29 manufacturing plants in 15 countries and over 44 marketing and sales organizations in 23 countries outside Japan.

As an international company we are well aware of the fact that in each of the 140 countries in which we conduct business there exist laws, regulations and customs pertaining to the areas of employment, tax, import/export, environmental, as well as the many others.

NEC recognizes that laws and regulations differ from country to country and we are committed to operate within these laws and regulations and to be recognized as a good corporate citizen in each and every country in which we do business. As NEC Electronics' new president I am fully aware of the U.S. laws prohibiting discrimination, and I intend to ensure, as my predecessors have done, that our company follows those laws.

The committee has asked us to address a number of specific questions concerning our employment practices. I would briefly just like to comment to those questions.

First, you have asked about the nationality of NEC Electronics employees. I am unable give you the information concerning the nationality of all of our employees because we do not keep these kinds of records. Nationality has no bearing on our personnel practices. Therefore, it is neither applicable and necessary for us to maintain these types of documentation.

Mr. LANTOS. Well, you surely do not expect the subcommittee to buy that because that is the focus of our inquiry, so for you to say to the committee, Mr. Saito, that you don't have the data because it is not a matter that you consider in your employment practices is a sort of a mindboggling statement because the whole issue is that large numbers of American citizens are complaining under oath that Japanese companies, like yours, discriminate against United States citizens by not allowing them to assume positions of managerial or executive responsibility.

The only way you can deal with that matter is by providing the subcommittee, and I might add the American people, with very detailed information on that subject, and I have to say that if you have no such information, then the rest of your testimony is of very little interest to the subcommittee because that is the focus of the subcommittee's inquiry and we will need to reinvite you to a subsequent hearing by which time you will have obtained the information which is the legitimate purview of the inquiry of this subcommittee.

We cannot deal with the question of whether American citizens are discriminated against by your company if you tell us you don't keep records on the basis of citizenship in your company by category of employment, executive, managerial, professional, technical, clerical and other.

So, my feeling is that you really didn't mean to say that, because if you had said that and you would stop there, we would be in trouble. But reading your prepared statement it is in conflict with what you have just said. You say on page 4, "NEC Electronics currently has 1,516 employees. Included in this amount are 67 Japanese employees who have been transferred from our parent corporation in Japan to support our operations."

So, you do have data. The data may not be in the form that this subcommittee requires for its investigation, so let me ask you some questions on the basis of your prepared statement.

Mr. WILES. Congressman——

Mr. LANTOS. Counsel, you will address the committee when you are given permission to do so. You have not been given permission.

Mr. WILES. I just wanted to——

Mr. LANTOS. Well, you are not yet recognized, counsel.

Mr. WILES. You just interrupted his statement is all I wanted to say.

Mr. LANTOS. I am fully cognizant of what I was doing, counsel. I would like to ask—I didn't interrupt the witness at all. I ask questions of the witness at any time during the hearing, counsel.

Mr. SAITO. Mr. Chairman, may I add a few words?

Mr. LANTOS. Well, you certainly may, but you have raised an issue and I would like to pursue this issue now. If you will turn to page 4 of your prepared statement, Mr. Saito, the last paragraph provides information that I would like to deal with. You indicate that 17 of your Japanese citizen employees are in executive and administrative positions. Is that correct, sir?

Mr. SAITO. That is correct.

Mr. LANTOS. That is correct. May I ask, sir, how many U.S. citizens are in executive and administrative positions?

Mr. SAITO. I know the people who report to me directly, but I do not know in detail the other people who are also in this category, so I would like to refer your question to Mr. Giovanola.

Mr. LANTOS. To whom?

Mr. SAITO. Mr. Giovanola.

Mr. LANTOS. Yes, please, go ahead.

Mr. GIOVANOLA. To answer your question, Mr. Congressman, in the total management area——

Mr. LANTOS. No, I would like to use the same category that you are using in your prepared——

Mr. GIOVANOLA. We attempted in our written testimony to use the categories that you specified—actually, you did not specify the categories and we attempted to tell you exactly how many people from the whole corporation were operating in the engineering area, the sales and marketing area——

Mr. LANTOS. I understand that.

Mr. GIOVANOLA. We don't have the total population broken down for today's testimony in those categories.

Mr. LANTOS. Well, let me ask you this, your prepared testimony indicates that you have 17 Japanese citizens in the executive and administrative category.

Mr. GIOVANOLA. That is correct.

Mr. LANTOS. How many U.S. citizens do you have in that category?

Mr. GIOVANOLA. The category as it is defined there we have—I can give you a total management——

Mr. LANTOS. No, I want it exactly the way you defined it.

Mr. GIOVANOLA. I don't have it broken down in that level of detail. I can certainly provide you with that information.

Mr. LANTOS. Well, let me——

Mr. GIOVANOLA. It is not in that form today.

Mr. LANTOS. Let me pursue the matter with all of you. You have counsel. The top person in the company I take it is Mr. Saito.

Mr. GIOVANOLA. That is correct.

Mr. LANTOS. Who is the second in command?

Mr. GIOVANOLA. The second in command is the senior vice president, Mr. Kirimoto.

Mr. LANTOS. Is Mr. Kirimoto a Japanese citizen?

Mr. GIOVANOLA. Yes, he is.

Mr. LANTOS. Who is the No. 3 person?

Mr. GIOVANOLA. They are a group of vice presidents. I am not sure——

Mr. LANTOS. At the same level more or less?

Mr. GIOVANOLA. Yes, sir.

Mr. LANTOS. How many?

Mr. GIOVANOLA. There are five to my recollection.

Mr. LANTOS. Five to your recollection.

Mr. GIOVANOLA. That is right.

Mr. LANTOS. So, the chief executive officer is a Japanese citizen.

Mr. GIOVANOLA. That is correct.

Mr. LANTOS. The No. 2 person is a Japanese citizen.

Mr. GIOVANOLA. That is correct.

Mr. LANTOS. Now, we come to the third layer of five whatever title you gave them.

Mr. GIOVANOLA. That is correct.

Mr. LANTOS. Indicate to me kindly what the citizenship of those five is.

Mr. GIOVANOLA. We have one vice president who is here from the parent corporation, and the other four to the best of my knowledge are American citizens, but I know they are not from the parent corporation.

Mr. LANTOS. Well, let me be sure I understand. Of the five——

Mr. GIOVANOLA. Of the five one——

Mr. LANTOS. Is a Japanese citizen?

Mr. GIOVANOLA [continuing]. Is a Japanese citizen.

Mr. LANTOS. And four are U.S. citizens?

Mr. GIOVANOLA. I am not certain, Mr. Congressman, if the four are citizens. I can tell you that they are not——

Mr. LANTOS. Well, are they Americans or Japanese?

Mr. GIOVANOLA. They are not Japanese, no, sir. They are not Japanese.

Mr. LANTOS. Well, if they are not Japanese and they are not Americans what are they?

Mr. GIOVANOLA. They might be British, or French, or Scandinavian, or some other citizenship.

Mr. LANTOS. Do you know them?

Mr. GIOVANOLA. Yes, I do.

Mr. LANTOS. Give me their names.

Mr. GIOVANOLA. Kelley.
Mr. LANTOS. Mr. Kelley is a U.S. citizen I take it.
Mr. GIOVANOLA. I believe so, sir, yes.
Mr. LANTOS. OK.
Mr. GIOVANOLA. Myself.
Mr. LANTOS. Yourself. You are a U.S. citizen.
Mr. GIOVANOLA. Yes, sir.
Mr. LANTOS. The next one.
Mr. GIOVANOLA. A gentleman named Marck.
Mr. LANTOS. Yes.
Mr. GIOVANOLA. He is a U.S. citizen.
Mr. LANTOS. OK.
Mr. GIOVANOLA. The fourth gentleman, Mr. Jelenko.
Mr. LANTOS. Also a U.S. citizen.
Mr. GIOVANOLA. To the best of my knowledge, yes.
Mr. LANTOS. OK. So, now we are up to seven people in the top hierarchy, No. 1, No. 2, and then the five below that.
Mr. GIOVANOLA. That is correct.
Mr. LANTOS. Now, let's take the next layer. What is the next layer?
Mr. GIOVANOLA. In the top management group that we classify as top management would be other direct reports to Mr. Saito, so we have accounted for I believe——
Mr. LANTOS. Seven people.
Mr. GIOVANOLA [continuing]. Seven people, so there is another six people.
Mr. LANTOS. May I ask by the way with respect to the seven people——
Mr. GIOVANOLA. Yes, sir.
Mr. LANTOS [continuing]. How many of those seven people are women?
Mr. GIOVANOLA. There are no women within those seven people.
Mr. LANTOS. No women in those seven people, OK. And how many women are there in the 17, the group of Japanese citizens in the executive and administrative level?
Mr. GIOVANOLA. There are no women in that category.
Mr. LANTOS. So, the top 17 Japanese citizens working for the company are all men.
Mr. GIOVANOLA. That is correct, sir.
Mr. LANTOS. That is correct, OK. Now, let's go down to the next layer. We have now accounted for the top seven people. At the next layer there are how many?
Mr. GIOVANOLA. Six people.
Mr. LANTOS. Six people. What is their citizenship?
Mr. GIOVANOLA. Two of those people are from the parent corporation. They are Japanese citizens. The remainder, to the best of my knowledge, are U.S. citizens.
Mr. LANTOS. How many of those six are women?
Mr. GIOVANOLA. There are no women.
Mr. LANTOS. There are no women.
Mr. GIOVANOLA. That is correct.
Mr. LANTOS. So, we are now down to the top 13 people.
Mr. GIOVANOLA. That is correct.

Mr. LANTOS. OK. Let's take the next layer. How many are in the next layer?

Mr. GIOVANOLA. In the next layer are 170 people we classify as middle management.

Mr. LANTOS. 170 people in middle management.

Mr. GIOVANOLA. That is correct.

Mr. LANTOS. OK. Let me go back to your written statement.

Mr. GIOVANOLA. Mr. Chairman, is it possible for Mr. Saito to finish his prepared statement?

Mr. LANTOS. As soon as I am finished with my questioning he will be given an opportunity to finish his statement. Your prepared statement says 17 individuals are Japanese citizens in the executive/administrative category. Is that correct?

Mr. GIOVANOLA. That is correct.

Mr. LANTOS. Does that encompass what you just referred to as middle management?

Mr. GIOVANOLA. Yes, some of those would be in middle management, yes, sir.

Mr. LANTOS. But the bulk of them are in the top management group?

Mr. GIOVANOLA. Of the 17, 5 are in top management that is correct, sir.

Mr. LANTOS. OK. May I ask in that top level group how many are of Hispanic or African-American background?

Mr. GIOVANOLA. We have one Hispanic in that top group.

Mr. LANTOS. What position does that person occupy?

Mr. GIOVANOLA. That gentleman is the director of strategic marketing planning.

Mr. LANTOS. Very good. Please proceed.

Mr. SAITO. The committee has also inquired as to employees who have transferred from our parent company in Tokyo. NEC Electronics currently has 1,516 employees. Of these, 67 employees are here in NEC corporation who support our operations.

You have also expressed interest in our OFCCP and our EEOC experience. In January 1985 the OFCCP audited the affirmative action plan of our manufacturing facility in Roseville, CA. The audit required us to modify our affirmative action plan to clarify the problem areas and to do additional outreach to recruit from minority communities. We have made this a priority and feel we have met this commitment.

With regard to the EEOC or the EED I have only been here a short time, but I am told by Mr. John Giovanola that we have only had four instances or charges during the past 5 years. In each of these cases NEC Electronics believed the allegations were made without a proper foundation, and with exception of the current pending arbitration the incidents of alleged discrimination were dismissed or were withdrawn.

This is below the average number of incidents of the alleged discrimination for a company of our size. I believe this is because NEC is conscious of and committed to the spirit of the affirmative action. Over the past several years, NEC Electronics has explored a number of ways to increase its ability to attract minorities and women into the company.

We have recognized that particularly in the engineering area the available resources among this segment are limited. In order to increase our visibility with these specific groups we have been participating in minority job fair recruiting programs at the University of California, Davis; California State University, Sacramento; California State University, Chico; and California State Polytechnic University, San Luis Obispo.

In addition we have made a corporate commitment to support both the society of women engineers and the minority engineering programs at these educational institutions. As an example, in the spring of 1990 NEC Electronics donated $125,000 to California State University, Sacramento, to be used exclusively for its minority engineering programs.

Although we believe that our financial support to these programs are important, we also believe that employee involvement in these activities are crucial. Over the years, our engineers have served as advisors to MEP programs at the college and the university level and as advisors to MESA [mathematics engineering science achievement] at the high school level. We have also encouraged our employees to volunteer their time to help students in ESL [English as a second language] programs and to act as mentors and tutors for "at risk" students. These activities are supported by the company and employees are allowed to participate on companypaid time.

This concludes my formal remarks. Mr. Chairman, I would be pleased to respond to any question you or other members of the subcommittee may have. Thank you.

[The prepared statement of Mr. Saito follows:]

Testimony of

Kunishiro Saito

President

NEC Electronics Inc.

before the

Subcommittee On Employment and Housing

of the

Committee On Government Operations

U.S. House of Representatives

Thursday, August 8, 1991 9:30 a.m.

San Francisco, CA, City Hall, Room 228

My name is Kunishiro Saito. I am President of NEC Electronics Inc.

NEC Electronics is a wholly owned subsidiary of NEC Corporation which is headquartered in Tokyo, Japan.

NEC Corporation is an international electronics company that manufactures over 15,000 different products marketed in more than 140 countries. NEC has 29 manufacturing plants in 15 countries and over 44 marketing and sales organizations in 23 countries outside Japan.

NEC believes it will function best as an international company by successfully "globalizing" our operations so that we can provide products and services in a timely, efficient manner from facilities located worldwide in a closely linked network. To this end NEC emphasizes the localization of its operations in order to contribute to the host countries in a number of ways from technology transfers to new employment opportunities.

As an international company, we are well aware of the fact that in each of the 140 countries in which we conduct business there exist laws, regulations and customs pertaining to the areas of employment, tax, import/export, environmental and others.

NEC recognizes that laws and regulations differ from country to country and we are committed to operate within these laws and regulations and to be recognized as a good corporate citizen in each and every country in which we do business. As NEC Electronics new president, I am fully aware of United States laws prohibiting discrimination, and I intend to ensure, as my predecessors have done, that our company follows those laws.

NEC Electronics supports the "globalization" strategy with its marketing and manufacturing operation in the United States. We supply over 5,000 different high technology products to support customers in the United States in industries such as computers, telecommunication, automotive, industrial, and consumer.

NEC Electronics has had sales and marketing operations in the United States since 1975. In 1984, NEC made a major commitment to its customers in the United States by opening a major semiconductor manufacturing facility in Roseville, California. NEC was the first Japanese company to invest in the electronics industry in this country. Our original investment in this facility was nearly $100 million. Over the next several years, we upgraded the facility by investing an additional $37 million.

At the present time, we are near completion of a 468,000 square foot addition to the Roseville plant. We estimate that the cost of this new facility will be over $500 million. When completed, it will be the largest merchant fabrication facility in the United States.

This investment of nearly three quarters of a billion dollars, has significantly added to the economic growth of Roseville and the surrounding area, as well as the State of California. The initial plant provided jobs for nearly 900 local residents and with the new facility in place, an additional 500 to 600 people will be hired.

NEC made the decision to add to its manufacturing capabilities in Roseville based on a number of reasons. First, California has an excellent reputation as a state that recognizes the benefits of foreign investment. As a result, we were encouraged at both the local and state level to expand our business activities in Roseville.

Second, NEC received overwhelming support from the local community for the expansion. We have always taken the position that we are a partner in the communities in which we do business and work hard to maintain a reputation as a good corporate citizen.

Now that you have a general understanding of our parent company and NEC Electronics, let me address the specific issues requested by this Subcommittee:

1. Nationalities of NEC Electronics personnel.

   The Subcommittee requested to know the nationalities of NEC Electronics personnel. Be advised that we do not maintain any records that identify the specific nationality of our employees. This is not an item of information that is required by us for any purpose. We have been advised by legal counsel that to require such information from our employees or potential employees could be considered a discriminatory activity.

2. Japanese Nationals.

   NEC Electronics currently has 1,516 employees. Included in this amount are 67 Japanese employees who have been transferred from our parent corporation in Japan to support our operations. These employees are supporting activities in the following areas: Executive/Administration - 17; Marketing - 12; Engineering - 38. 41 are classified as Managers and 26 are classified as professionals.

We expect that these employees will stay with us approximately four years before returning to Japan.

3. Management Level Job Permanence and Promotions.

NEC Electronics has an Employment at Will Policy. All managerial employees are required to sign an employment agreement which stipulates employment at will. This employment agreement also provides for severance pay in the event of a termination at the employer's request and a dispute resolution process that includes several levels of review including arbitration.

Managerial promotions are made on the basis of merit without regard to sex, race, creed, or national origin. All jobs within NEC Electronics Inc. have been rated utilizing the Hay Job Evaluation Systems administered by three Job Evaluation Committees (Non-Exempt, Exempt, and Executive). The recommendations of these Committees are reviewed and approved by the President.

4. OFCCP and EEOC Experience.

The OFCCP audited the Affirmative Action Plan of our manufacturing facility in Roseville, California in

January 1985. The audit required our commitment to modify our Affirmative Action Plan to clarify the identification of problem areas and to do additional outreach to recruit from minority communities and we have met this commitment.

During the last 5 years we have had only 4 incidents of charges filed with either the EEOC or the corresponding state agency. The disposition of these allegations is as follows:

1. Alleged retaliation for reporting an incident of sexual harassment - charges were withdrawn following confidential settlement;

2. Alleged National Origin discrimination by an employee - currently pending private arbitration decision;

3. Alleged Age Discrimination by a job applicant - Thorough investigation by EEOC resulted in a dismissal of charges;

4. Alleged race, age, national origin discrimination by Thomas McDannold and Edward Neubauer. These two former NEC Electronics executives filed suit in Federal Court long before they filed any charges of discrimination. Although they alleged pro-Japanese bias, neither plaintiff sued NEC

Electronics for violation of United States antidiscrimination laws.. The lawsuit focuses largely on issues of control over NEC Electronics by its parent corporation NEC. After the presiding judge indicated that he intended to grant the Company's motion for Summary Judgement, the cases were settled and all allegations were withdrawn. The court ordered that the settlement be kept confidential.

In each of the above mentioned cases NEC Electronics Inc. believed the allegations were made without proper foundation and as you can see, with the exception of the pending private arbitration of alleged National Origin discrimination, the other three incidents of alleged discrimination were either dismissed or withdrawn.

I believe our history reflects a below average incident of alleged discrimination because we are conscious of and committed to the spirit of Affirmative Action. Over the past several years, NEC Electronics has explored a number of ways to increase its ability to attract minorities and women into the company.

We have recognized that, particularly in the engineering area, the available resources among this segment are limited. In order to increase our visibility with these specific groups, we have been participating in Minority Job Fair Recruiting programs at the University of California, Davis; California State University, Sacramento; California State University, Chico; and California Polytechnic University, San Luis Obispo.

In addition, we have made a corporate commitment to support both the Society of Women Engineers and the Minority Engineering Programs (MEP) at these educational institutions. As an example, in the Spring of 1990, NEC committed $125,000 to California State University, Sacramento, to be used exclusively for its MEP program.

Although we believe our financial support of these programs are important, we also believe that employee involvement in these activities are crucial. Over the years, our engineers have served as advisor to MEP programs at the college and university level and as advisors to MESA (Mathematics Engineering Science Achievement) programs at the high school level. We have also encouraged our employees to volunteer their time to help students in ESL (English as a second language) programs and to act as mentors and tutors for "at risk" students. These activities are supported by the company and employees are allowed to participate on company-paid time.

This concludes my formal remarks. Mr. Chairman, I would be pleased to respond to any question you or other members of the subcommittee may have.

Mr. LANTOS. Thank you very much, Mr. Saito, and let me commend you on your very, very fine handling of what is a second language.

We next go to Mr. Ryusaburo Wada, president and chief executive officer of Dai-Ichi Kangyo Bank.

STATEMENT OF RYUSABURO WADA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DAI-ICHI KANGYO BANK OF CALIFORNIA, ACCOMPANIED BY LINDA CORMIER, VICE PRESIDENT OF HUMAN RESOURCES

Mr. WADA. Distinguished chairman, Congressman Shays, on behalf of the bank I am pleased to express our gratitude at being asked to present our views at this important hearing.

As president of the bank, I am responsible for ensuring that equal employment opportunity is a cornerstone of the bank's business practices in California, and that compliance with both the letter and the spirit of equal employment law receives attention at the highest levels within the bank.

When I became president I was aware that Dai-Ichi Kangyo of California had enjoyed great success in implementing equal employment policies, in large part due to the efforts of Linda Cormier, who is sitting beside myself, the bank's vice president and head of human resources.

I have affirmed in writing the bank's commitment to equal employment opportunity and have made clear that Linda Cormier has primary responsibility for implementation of that policy. She has my full support and reports to me on the banks efforts in that area.

I would like to make one point very clear in response to the chairman's invitation to testify. We are an American bank, owned by a bank in Japan, whose goal is to have American men and women of all races and national origins in all functions of the bank. I am proud to tell you that at present the bank's work force of 130 persons is comprised of 115 people hired here in California, and only 15 Japanese nationals on assignment from our parent bank in Japan.

Seventeen years ago that percentage stood at 30 percent, 30 percent. Seven years ago that stood at 20 percent. And today that percentage is 11 percent.

The percentage of people from our parent company against total employees.

Mr. LANTOS. Yes, but that——

Mr. WADA. That equals 30 percent——

Mr. LANTOS. When was it 30 percent?

Mr. WADA. Seventeen years ago.

Mr. LANTOS. Seventeen years ago?

Mr. WADA. Seventeen.

Mr. LANTOS. Seventeen years ago.

Mr. WADA. Yes. Our bank has been established 17 years ago.

Mr. LANTOS. I understand that. You established the bank in 1973?

Mr. WADA. 1974.

Mr. LANTOS. 1974, OK. And 30 percent of the employees were Japanese citizens?

Mr. WADA. Correct.

Mr. LANTOS. What was the total employment of the bank at the time?

Mr. WADA. I would like to let my colleague——

Mr. LANTOS. No, I'd like you—you are doing very well. You can consult with your colleague, but I would like you to answer.

Mr. WADA. Yes, Mr. Chairman. Unfortunately, I don't have the figure of total employees at that time.

Mr. LANTOS. Can you give me a ballpark figure? When you began, you really had a very small operation, didn't you?

Mr. WADA. Yes, I think so.

Mr. LANTOS. In 1974 it was just a small operation?

Mr. WADA. Oh, I think so.

Mr. LANTOS. How many total employees would you guess?

Mr. WADA. I guess 100.

Mr. LANTOS. Let us say 100. So in 1974 you had about 100 employees?

Mr. WADA. Yes.

Mr. LANTOS. Of whom 30 were Japanese citizens?

Mr. WADA. I guess so.

Mr. LANTOS. And 70 were U.S. citizens?

Mr. WADA. Yes.

Mr. LANTOS. What is your next figure—by what time did it drop to 20 percent?

Mr. WADA. It was 7 years ago.

Mr. LANTOS. Seven years ago?

Mr. WADA. Yes.

Mr. LANTOS. That was 1984?

Mr. WADA. Yes, 1984, yes.

Mr. LANTOS. In 1984 how many total employees did you have at the bank?

Mr. WADA. I would guess the number is almost the same as the previous year.

Mr. LANTOS. About 100?

Mr. WADA. I think so.

Mr. LANTOS. And how many employees do you have now?

Mr. WADA. I beg your pardon?

Mr. LANTOS. How many employees do you have now?

Mr. WADA. 130.

Mr. LANTOS. You have 130 employees, and about 13 of those are Japanese citizens?

Mr. WADA. Fifteen.

Mr. LANTOS. Fifteen.

Mr. WADA. Oh, I'm sorry. Could you repeat your question, please?

Mr. LANTOS. You currently have about 130 employees?

Mr. WADA. Yes, sir.

Mr. LANTOS. And about 15 of those are Japanese?

Mr. WADA. Yes, sir.

Mr. LANTOS. OK. You are the top person in the bank?

Mr. WADA. Yes, I am.

Mr. LANTOS. You are the chief executive officer?

Mr. WADA. Yes, I am.

Mr. LANTOS. Under you, at the same level, how many people are there—one, two, three?

Mr. WADA. Under myself?

Mr. LANTOS. Yes.

Mr. WADA. There are three.

Mr. LANTOS. Three people?

Mr. WADA. Yes.

Mr. LANTOS. And how many of those are Japanese citizens?

Mr. WADA. Two.

Mr. LANTOS. Two of the three?

Mr. WADA. Yes.

Mr. LANTOS. So the top person is Japanese, and in the next layer there are three individuals, and two of those are Japanese citizens. How about at the next level, how many people are there?

Mr. WADA. Twelve.

Mr. LANTOS. Twelve?

Mr. WADA. Yes.

Mr. LANTOS. And of those 12, how many are Japanese citizens?

Mr. WADA. Three.

Mr. LANTOS. Three. Now, of these 15 people at the top, how many are women?

Mr. WADA. Are you asking about the people from Japan?

Mr. LANTOS. No.

Mr. WADA. You said the 15?

Mr. LANTOS. No, of these 16 people—yourself, your three top aides in the next level——

Mr. WADA. Yes.

Mr. LANTOS [continuing]. And the other 12——

Mr. WADA. Yes.

Mr. LANTOS [continuing]. That would be 16 people. Of those 16 people, how many people are women?

Mr. WADA. Five.

Mr. LANTOS. Five?

Mr. WADA. Five, yes, sir.

Mr. LANTOS. Please go ahead.

Mr. WADA. We know that the subcommittee is very anxious to see to it that minorities of all types be given an equal opportunity, and that women have an opportunity to rise in appropriate numbers to positions of responsibility, for which they are qualified. I am confident that you will see from the information Ms. Linda Cormier has prepared for the subcommittee, that we have given opportunity to minorities of all types, and we have a track record with women of which we are proud.

We believe that the state of affairs you seek is well in process at our bank. With the chairman's permission, Linda Cormier, my colleague, the bank's vice president and head of human resources, would like to introduce three exhibits she has compiled in response to the subcommittee's questions.

[The prepared statement of Mr. Wada follows:]

Written Statement of Ryusaburo Wada, President and Chief Executive Officer, Dai-Ichi Kangyo Bank of California before the Subcommittee on Employment and Housing of the Committee on Government Operations, U.S. House of Representatives

Submitted August 2, 1991

Distinguished Chairman, Members of the Subcommittee, Ladies and Gentlemen, I am Ryusaburo Wada, President and Chief Executive Officer of Dai-Ichi Kangyo Bank of California. On behalf of the Bank, I would like to express our gratitude at being asked to present our views at this important hearing on employment discrimination by Japanese corporations in the United States. As an American company proud of its work in this country, Dai-Ichi Kangyo Bank of California believes that every business has a responsibility to insure that its actions are those of a good corporate citizen. Our Bank works hard to meet that responsibility not only in our employment practices, but also through our community lending practices providing housing and employment opportunities to middle and low income residents, and through our involvement in community based charities and neighborhood projects. We believe that Dai-Ichi Kangyo Bank of California has accomplished much to establish itself as a responsible corporate citizen of this state and this country, and vow that our efforts toward that end will continue far into the future.

Before responding to the specific questions you have posed, I would like to state that Dai-Ichi Kangyo Bank of California strongly believes equal employment opportunity is an important right of all persons. When I recently became President of the Bank, I was instructed that assurance of equal employment opportunities is a cornerstone of the Bank's business practice in California, and that compliance with both the letter and spirit of equal employment law is one of my highest responsibilities to the Bank. I was also told that Dai-Ichi Kangyo Bank of California has enjoyed great success in implementing equal employment policies, in large part due to the efforts of Linda Cormier, the Bank's Vice President and Head of Human Resources. I have affirmed the Bank's commitment to equal employment practices in writing to every Bank employee and applicant for employment, and stress equal employment practices as a top priority for every Bank supervisor and manager.

We have been asked to briefly address three issues in our presentation to the Subcommittee. I will touch upon each of these issues, allowing Ms. Cormier to provide a more detailed description of the Bank's equal opportunity practices and workforce demographics.

The first issue you have asked us to address is the nationalities of our employees. As Ms. Cormier will

explain, we are not a Japanese company but rather an American bank whose goal is to have American men and women of all races and national origins in all positions at the Bank. This goal is evidenced by our inception as an American corporation, by the equal opportunity practices we have followed and the efforts we have made in the areas of hiring and promotions, and by our continuing commitment to treating all persons fairly and without regard for race, gender or national origin. I am proud to tell you that, at present, the Bank's workforce of 130 persons is comprised of 115 Americans and only 15 Japanese nationals. While we are pleased to have achieved this result, we also fully intend to continue our ongoing efforts to fill all positions with qualified locally hired persons.

The second issue we have been asked to address regards Japanese nationals from our parent company currently employed with Dai Ichi Kangyo Bank of California. As I mentioned, we currently have 15 Japanese nationals assisting us. The average tenure of these individuals in this country is approximately three years. As Ms. Cormier will discuss, we have successfully replaced a great number of Japanese employees with locally hired persons over the last 17 years, and are on a steady course to continue in this effort, both through the hire of qualified managers from outside the Bank and through the promotion of qualified Bank employees. It is the Bank's intention and my own intention that the Bank

should be run by locally hired persons at the earliest time such changes are realizable.

The final issue we will address involves Bank policies regarding management personnel. This is obviously an area Ms. Cormier is best suited to address. However I would like to say that the Bank requires that managers demonstrate a broad range of skills, including flexibility, understanding and a commitment to working in harmony with the Bank's entire management team. The Bank does not guarantee managers continued employment on any basis, but rather bases all personnel decisions on the Bank's legitimate business needs.

As President of the Bank, I am ultimately responsible for ensuring that the Bank complies with the letter and the spirit of equal opportunity laws. I take this responsibility very seriously and demand that the same commitment be evidenced at every level of Bank management. However I also recognize that equal employment practices demand full time professional attention, and admit that the success Dai-Ichi Kangyo Bank of California has enjoyed in working toward equal employment opportunity is primarily due to the efforts of the Bank's Human Resources Department.

Linda Cormier, the Bank's Vice President and Head of Human Resources, has worked to develop the Bank's equal

employment policies and practices and monitors the actions of Bank employees for consistency with principles of fairness and equality of treatment. I hope that Ms. Cormier's understandings and insights into the question of equal opportunity in a multicultural institution provide you with the same sense of hopefulness and accomplishment that she has brought to Dai-Ichi Kangyo Bank of California. Thank you again for this opportunity to participate in this hearing.

Mr. LANTOS. We will be very happy to have everything submitted to the subcommittee. We would like to move on to the next company, because we will need to wrap up this hearing so that Congressman Shays, as I indicated earlier, can be present for all of it.

Ms. CORMIER. Mr. Chairman.

Mr. LANTOS. Yes.

Ms. CORMIER. If I may interrupt you. I am sorry to interrupt you, but if I could briefly make a few remarks.

Mr. LANTOS. If we have time later, we will give you a chance.

Ms. CORMIER. Yes, I appreciate that.

Mr. LANTOS. We cannot give you a chance now because I want to be sure that all witnesses have an opportunity——

Ms. CORMIER. I understand. But, in Mr. Biniarz' remarks, he specifically mentioned me and made some comments on my authority at the bank. And I think it is important for the subcommittee to hear from me, where I can clarify my authority at the bank.

Mr. LANTOS. We would be glad to hear from you if we have time.

Ms. CORMIER. Thank you very much.

Mr. LANTOS. And we will take your prepared statement in full. And if we have time, we will have you come back.

[The prepared statement of Ms. Cormier follows:]

Written Statement of Linda Cormier, Vice President of Human Resources, Dai-Ichi Kangyo Bank of California before the Subcommittee on Employment and Housing of the Committee on Government Operations, U.S. House of Representatives
Submitted August 2, 1991

We are particularly pleased to participate in this open forum because we believe that Dai-Ichi Kangyo Bank of California, an American bank coming to this country out of a Japanese background, has a unique perspective on the issues this committee addresses. I, Linda Cormier, as Vice President of Human Resources for the Bank, head the Bank's effort to ensure equal opportunity for all persons at the Bank. I am directly responsible to the President of the Bank for the implementation of the equal opportunity employment policies Mr. Wada describes in his statement.

Dai-Ichi Kangyo Bank of California shares the concerns you express in conducting this hearing. We also believe that there are many misconceptions about Japanese business practices in the United States and that open public discussion of this topic will promote improved consideration and understanding on all sides.

As a starting point for our discussion of this issue, I would like to state a basic premise from which any fruitful analysis of the topic of equal employment practices

must follow: that "Japanese" companies operating in the United States are as different as "American" companies are, and, therefore, must be viewed individually. Just as no stereotype can accurately convey the truth about an individual, so any inflexible notion of "Japanese companies in the United States" does not accurately convey the truth about any one "Japanese" company. Moreover, in this area as in others, use of static and overly simplistic labels, while appearing to simplify discussion, most often creates a bar to understanding.

Corporations do business in this country for many different reasons and with many different intentions. Any discussion of a "Japanese" style of doing business must recognize that many corporations of Japanese ownership come to this country fully committed to employment practices which you might call "American" but which perhaps are better described as "progressive" or "enlightened." These corporations hire and promote individuals based on their qualifications and performance in light of the particular needs of the business. Dai-Ichi Kangyo Bank of California is one such company and we are happy to discuss our successful beginnings as an American equal opportunity employer and our commitment to continued growth and progress toward those ideals you espouse in this hearing. We would also like to share with you our conviction that equal employment practices are just part of the responsibility a

business owes to its community, and that corporate involvement in the community should encompass business practices helpful to the community as well as participation in local programs addressing the needs of community members.

The Bank's History of Equal Opportunity Recruitment, Hiring and Promotion

Since the Bank began doing business in California in 1974, it has been our goal to hire qualified local (hereafter referred to as "American") staff whenever possible and to promote qualified staff members to fill higher level vacancies as they occur. Consistent with that goal, the percentage of expatriate Japanese staff has decreased compared with the percentage of American staff. We estimate that the percentage of expatriate staff from Japan was approximately 30% in 1974. As we aggressively recruited and hired persons from the local community, the percentage of expatriate staff shrank to 19% in 1984 and today stands at 11.5%. We will continue working toward the replacement of Japanese nationals by American workers with the same commitment and effort that has allowed us to move forward in this area over the past 17 years. We also vow to continue our ongoing efforts to increase the diversity of our American workforce, efforts which are evidenced by our affirmative action recruiting, hiring and promotion

practices which I will now briefly describe for the Subcommittee.

In conjunction with the Bank's Affirmative Action Plan, the Bank actively recruits and hires minorities and women and seeks to ensure their success and to help them progress within our organization. We recruit from a broad geographic base and take measures to ensure that minority community members are aware of openings at the Bank as they occur. For instance, we list openings with the Employment Development Department and advertise in publications whose circulations include large numbers of minority readers. When using outside recruiters, we ensure that the recruiters are aware of the Bank's affirmative action policies and goals and regularly remind them of our affirmative action focus. In addition, the Bank asks recruiters' cooperation in helping us to identify qualified female and minority applicants to fill openings. We have successfully identified a number of successful candidates for employment as a result of our open expression of the Bank's equal employment policy.

The data requested by the subcommittee provides a sense of the Bank's efforts to hire and promote qualified local persons on a nondiscriminatory basis. Dai-Ichi Kangyo Bank currently employs 130 persons. Of those 130, 115 are Americans, with the remaining 15 persons being managers who

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are Japanese nationals. The Bank's 115 American employees fall into the following categories: 70 clerical employees; 18 officer level employees; and 27 managerial/executive employees. While these figures respond to the subcommittee's written questions, we would like to provide further information about the diversity of our workforce.

For example, we believe it is significant that, of the Bank's 115 locally hired employees, 76 (approximately 66%) are women. 13 of these women were hired as or have been promoted to officer level, while 11 are now managers, comprising over one quarter of the Bank's management-executive group. Similarly, the Bank's American employees include persons representing virtually every racial and national background, with most groups being represented predominantly at the clerical level with more limited representation at the officer and/or management levels. As one example, the Bank employs 14 Hispanics, 3 of whom were hired as or have been promoted to managers.

The Bank's commitment to employment of women and minorities is not limited to hiring efforts or entry level positions. To maximize promotional opportunities for our staff, the Bank offers tuition assistance for staff who want to improve skills to progress within our organization. Many Bank personnel have availed themselves of this benefit. For those staff who wish to study the Japanese language, we

provide tuition reimbursement. Every year we send staff members to Japan for intensive training to help them prepare for increased responsibilities in our Bank.

Dai-Ichi Kangyo Bank of California is proud of its ability to recognize the contribution of women and minorities. There are numerous examples within our organization of men and women of all races and national origins contributing to our success:

- E.A., an Hispanic male hired in 1987 to start up a Real Estate Lending Department who now manages a $65 million loan portfolio.

- J.H., a caucasian woman hired in 1989 as a trainee and promoted twice, currently holding the position of Trust Officer III.

- E.C., a Chinese-American woman was hired in 1987 to start up a specialized Business Development Department, she now manages a loan portfolio of $10 million to $15 million.

- H.T., a Japanese-American woman hired in 1975 as a Teller who today is Senior Vice President and Treasurer in charge of Bank Operations, Data Processing and Cash Management Services.

- J.A., an Hispanic male employee who began working at the Bank part time during school vacations while in college. Today he is an Assistant Vice President in the Head Office Operations Division.

- C.J., a black woman, hired as wire clerk in 1980, has been promoted 6 times and currently holds the Operations Officer II position in charge of bookkeeping and procedure development for Southern California branches.

- C.F., an Hispanic woman in our San Jose Branch began working for the Bank in 1981 as a Secretary. Today she is an Assistant Vice President in charge of Operations.

- S.C., a Chinese woman who joined our Bank in 1977 as an entry-level Bookkeeper. Today she is a Loan Officer III.

These are just a few examples of the employees who have succeeded at our Bank. We are proud of these employees, and proud to have been able to provide them with the opportunities to get ahead in our organization and further their careers.

The Bank's Ongoing Monitoring of Equal Employment Practices

As the above results indicate, Dai-Ichi Kangyo Bank of California has worked hard to ensure that it succeeds as an equal opportunity employer. The Bank has followed an Affirmative Action Plan for many years. The President of the Bank demands that all staff at every level comply with this plan in spirit and practice. As Head of Human Resources, I provide training to all supervisory and management staff in the area of affirmative action and equal employment opportunity. I also monitor compliance with the Affirmative Action Plan and regularly report to the President on the Bank's progress.

The Bank recognizes that even these aggressive corporate equal employment policies and practices would be inadequate to ensure equal opportunities for all applicants and employees in the absence of acceptance of these principles at all levels and active monitoring of the Bank's management practices. To insure Bank-wide success, the President or I meet with each Bank employee at least once each year to discuss in confidence any problems, concerns, goals and aspirations, including those relating to advancement and the Bank's Affirmative Action program. These discussions have been critical to the Bank's understanding of employee concerns and apprehensions, and

have helped us build an outstanding level of trust with our employees and to build a solid team of contributors, each of whom has an open door to continued advancement at the Bank for years to come.

A final note on the topic of advancement and management employment at the Bank, in response to the subcommittee's third request for information. Promotional decisions at the Bank are based on candidates' skills and performance, experience and length of service and ability to assume additional responsibilities. These criteria are measured in regular performance evaluations monitored by the Human Resources Department. Once promoted into management, an individual is expected to demonstrate a high level of organizational and decision-making skills, strong customer relations and interpersonal skills, and good supervisory and leadership skills. Moreover, management personnel must demonstrate commitment to and effectiveness at promoting the Bank's affirmative action policies. In view of these requirements and consistent with the Bank's changing business needs, it is not Bank policy to guarantee management personnel continued employment. The Bank's written policies expressly disavow any such representation or understanding.

The Bank's Loans to Community Businesses and Participation in Community Support and Redevelopment Projects

As stated above, we believe that the Bank's record as an equal opportunity employer is just one measure of its commitment to being a good corporate citizen. Dai-Ichi Kangyo Bank of California is additionally involved in the local community both through its community-minded lending practices and through its participation in community-based programs specifically designed to meet community needs.

The Bank provides significant assistance to the community in the form of loans and financing of local projects. The Bank makes loans to the business community to supply working capital and finance construction and expansion of facilities, resulting in significant employment opportunities to members of the local community. The Bank provides financing for the leasing of equipment for new construction and manufacturing, again providing employment opportunities to local workers. We additionally hold substantial business and residential real estate loans, and invest in the Federal National Mortgage Association and in the Federal Home Loan Bank. The Bank's trust division serves the trust and bond financing needs of local school districts, municipalities and public institutions.

In addition to benefitting the local community through its regular lending practice, Dai-Ichi Kangyo Bank of California is fully committed to assisting lower income persons. We are a founding member of the California Community Reinvestment Corporation, a consortium of financial institutions providing preferred-term financing to community based projects and redevelopment efforts appropriate to the needs of low income residents. The Bank has pledged one million dollars to CCRC's efforts. We recently approved a loan application for a $100,000 line of credit to the Low Income Housing Fund, a California nonprofit housing corporation based in San Francisco. In addition, the Bank has provided and continues to provide financing to community redevelopment projects ranging from the construction of low and [illegible] cost single and multiple family homes to the construction and upgrade of apartment complexes, local commercial centers, medical offices and a wide variety of small, independently owned businesses in each of the communities in which we are located.

One of the Bank's vehicles for targeting support of projects helpful to local communities is coordination with California's Community Redevelopment Agency. For example, the Bank has provided substantial financing to the El Monte and Glendale Community Redevelopment Agencies to assist local real estate projects.

The Bank's Participation in Charitable and Public Service Work in the Local Community

The Bank's commitment to being a good corporate citizen is further evidenced by our institutional and individual involvement in public service work apart from our banking operations. We encourage our staff to become involved in community volunteer work and support their participation in a wide variety of community service activities. On a corporate basis we donate money to many different types of charitable organizations. Representative charitable donations made by Dai-Ichi Kangyo Bank of California during 1990 include: the Venice Family Clinic, providing health care to poor and homeless people; the United Way Campaign; Los Angeles Music Center; the Los Angeles Festival; San Diego State University Scholarship Foundation; the Glendale Symphony Association; San Diego State University Japan Studies Institute; YMCA; Police and Firefighters; and Junior Achievement.

These kinds of contributions have, of course, continued in 1991, and new projects have been added. Recently our President, Executive Vice President, Senior Vice President and several other Bank officers and staff spent a Saturday in South Central Los Angeles working with the Los Angeles Neighborhood Housing Services program,

painting the homes of low-income citizens. This is an on-going program and Dai-Ichi Kangyo Bank of California will participate regularly.

. . . . . .

In summary, Dai-Ichi Kangyo Bank of California recognizes the importance of being a good corporate citizen in its employment practices, its business participation in community-based projects and in its charitable and volunteer efforts to better the community. The Bank is an American bank and a member of the California community, with a long term commitment to providing good jobs, a quality work environment and a sense of community involvement to our employees and their families. We are an equal opportunity employer and have made great progress toward our goal of having a staff of American men and women of all races and national origins at every level of the Bank.

Thank you on behalf of Dai-Ichi Kangyo Bank of California for this opportunity to participate in an important discussion of equal opportunity practices among Japanese corporations. Our work in assuring equal employment opportunities at the Bank is founded on the open discussion of sensitive issues, and I hope that these hearings may promote the same kind of mutual communication and improved understanding.

FINANCIAL HIGHLIGHTS

	1990	1989	Change	Percent
For the year *Dollars in thousands*				
Net income	$38,092	$18,991	$19,101	101
Return on average assets	0.55%	0.29%	0.26%	—
Return on average equity	7.61%	4.50%	3.11%	—
At year-end *Dollars in millions*				
Assets	$7,105	$6,889	$216	3
Loans and leases, net	4,608	4,662	[54]	[1]
Deposits	5,242	5,564	[322]	[6]
Stockholder's equity	561	473	88	19

Mr. LANTOS. We would like now to hear from Mr. Tomita, vice president of Toyota Technical Center. If you will please take the mike and speak right into it.

STATEMENT OF KAZUO TOMITA, GROUP VICE PRESIDENT, TOYOTA TECHNICAL CENTER, U.S.A., INC., ACCOMPANIED BY G. HAMILTON LOEB, ESQ., PAUL, HASTINGS, JANOFSKY & WALKER

Mr. TOMITA. I would like to summarize our status regarding the subcommittee's request.

Mr. LANTOS. Please.

Mr. TOMITA. Mr. Chairman and distinguished Congressman, my name is Kazuo Tomita. I am group vice president of Toyota Technical Center, U.S.A., Inc., which I will refer to as TTC. I appear in response to the subcommittee's request. Sitting with me at the witness table is Mr. Hamilton Loeb, our attorney for this hearing.

As I am sure you know, Mr. Chairman, English is my second language.

Mr. LANTOS. You are doing very well.

Mr. TOMITA. Thank you very much, Mr. Chairman. And I would ask your patience if I need to consult with Mr. Loeb, to ensure that I properly understand your questions.

Mr. LANTOS. Sure.

Mr. TOMITA. You have heard from Mr. John Horton, a TTC employee, who has filed a discrimination suit in a California Superior Court against TTC. With respect to Mr. Horton's allegations, let me repeat the three elements of TTC's position. First, TTC's policy is nondiscrimination. That is, to make employment decisions based on qualifications for the job, not on the basis of race, sex, national origin or other prohibited criteria.

Mr. LANTOS. With all due respect to your statement, I have yet to encounter a company that has a policy of discrimination. So, we really appreciate your making this general statement. But a general statement does not address the concerns of the subcommittee, because I do not think there is a company in the United States that would testify before a congressional committee that its policy is one of discrimination.

It is obvious that all companies claim, whether they are United States-owned, British-owned, Japanese-owned, that their policy is nondiscrimination. What we are probing is whether, in fact, the articulated policy is reflected in the actions of the company. So that is really what I would like to ask you to address yourself to, because I would like to come to my questions, as I did with your colleagues earlier, which were very helpful, their answers were helpful.

So, please go ahead with your statement, but I would be grateful if you would deal with specifics rather than generalities. Because with generalities, we are not going to get anyplace.

Mr. TOMITA. Thank you, Mr. Chairman. Second, the allegations Mr. Horton makes in his lawsuit, and before this subcommittee today, are without merit. TTC is vigorously defending his lawsuit in the courts, where we expect that the facts surrounding our em-

ployment practices will be fully addressed, and that TTC will be found to have acted consistent with its policy of nondiscrimination.

Third, we believe, and our attorneys have advised us, that the proper place for responding to Mr. Horton's allegations is in the courts, and that it would be inappropriate to comment outside the judicial proceedings on the subject matter of his lawsuit.

Mr. LANTOS. Now, let me just advise you that attorneys advise all clients to do just what you have read. And let me tell you that it is very appropriate for you and for other witnesses to respond to the questions propounded by the members of the subcommittee.

Mr. TOMITA. Thank you, Mr. Chairman.

Mr. LANTOS. We understand that your attorney is doing his job, and I want you to know that we are doing our job. There is nothing exclusive in having questions asked in a court of law, and in a congressional hearing. Both places are appropriate places for questions to be asked, and questions to be answered. We don't want to prejudice your court case, but you, as an officer of a company operating in the United States, are under the same obligation as any other officer in any other U.S. corporation. When in a congressional hearing room, you answer questions propounded by members of that committee. All corporations, at all times, are in lawsuits with everybody. And if we were to take the position that lawsuits prevent corporate officers from appearing before congressional committees, there would be no congressional hearings. So we understand about these things.

Is there any further prepared statement?

Mr. TOMITA. Yes, I have. I will be ending up in a couple of minutes.

Mr. LANTOS. Please.

Mr. TOMITA. I understand that your purpose is not to address Mr. Horton's allegations, but to seek information about employment practices of TTC and other Japanese companies. My written statement provides background on TTC and its development, which I will not repeat here. Instead, I would like to highlight, in a few sentences, what has been happening to our work force in light of changes in TTC's mission. Our prepared statement shows TTC performs highly specialized technical functions with respect to the development to Toyota Motor Corp., of new automobile designs and products. We work closely and virtually exclusively with other operating units of TMC in Japan, and in the United States, that are involved in the conceptualization, production and marketing of Toyota vehicles for the North American market.

Until recently, we served as a small United States base for TMC's Japan-based design and engineering departments, surveying technical trends, assisting in evaluating and developing Japanese-designed prototypes for North American market conditions, and reporting information back to the TMC departments that could put it to use.

In the past 2½ years, our role has expanded considerably. TTC is maturing to become the center of U.S.-based technical research and development activities for TMC's North American operations. Toward that end, as our statement describes, we have established major research and development facilities in Ann Arbor, MI, and

Torrance, CA, and we are constructing an important vehicle proving ground and evaluation facility near Phoenix, AZ.

This new role is resulting in changes for TTC. More contact with the Toyota manufacturing facilities in the United States, and more direct interaction with U.S. suppliers. It also means an increase in the number of Americans hired, and in the percentage of American employees in our work force. We now have more than five times the number of American employees that we had in January 1989.

Americans now account for over 60 percent of our work force, up from about 40 percent then. Since January 1989, about one-quarter of our work force, more than 60 American employees, have been hired for or promoted to professional and managerial positions. Under our basic expansion plan, we expect that the size of our U.S. work force approximately to double over the next several years. And we expect the percentage of Americans to reach about 80 percent.

We have filled two general manager vacancies with Americans in the last year. And we expect to fill several other positions at the general manager level or higher with Americans in the next 18 months. In short, we expect all of our U.S. employees, particularly engineers and management, to continue to play growing roles at TTC as our mission expands.

Thank you very much.

[The prepared statement of Mr. Tomita follows:]

STATEMENT OF KAZUO TOMITA, GROUP VICE PRESIDENT, TOYOTA TECHNICAL CENTER, U.S.A., INC., SUBMITTED IN CONNECTION WITH THE HEARING OF THE EMPLOYMENT AND HOUSING SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS, UNITED STATES CONGRESS, ON AUGUST 8, 1991 AT SAN FRANCISCO, CALIFORNIA

Mr. Chairman and distinguished members of the Subcommittee, my name is Kazuo Tomita and I am a Group Vice President of Toyota Technical Center, U.S.A., Inc., which I will simply refer to as "TTC" throughout this Statement.

TTC is a defendant in a lawsuit filed in the California Superior Court by an employee alleging discrimination in each of the areas on which the Subcommittee has requested comment from TTC. We contend that the allegations of discrimination contained in this lawsuit are without merit, and are vigorously defending the lawsuit. As is customary for matters in litigation of this sort, our attorneys have advised us that it would be inappropriate to comment in any detail outside the judicial proceedings on the subject matter of the lawsuit. TTC fully expects that the facts surrounding its employment practices will be addressed in the litigation and that TTC will be found to have acted consistent with its policy of non-discrimination. We trust that the Subcommittee will understand that the pendency of this lawsuit may necessarily

affect the extent to which we think it is proper to respond to questions now before the courts.

A. Background Information.

TTC was established in the United States in 1977 as the U.S. research and testing facility of Toyota Motor Corporation, or "TMC," in Japan. The primary function of TTC is to obtain critical design and engineering information by testing and evaluating "next generation" prototype vehicles in the United States and Canada under varied driving conditions, including road surface, highway systems, weather, speed and other traffic conditions. TTC then provides this information to TMC so as to insure that TMC continues to produce top quality products that meet the needs of U.S. and Canadian consumers, as well as social and environmental demands for safety, emissions control and fuel conservation. TTC also performs important research and testing in connection with development of automobile parts and design elements which will improve compliance with federal and state fuel consumption and exhaust emissions standards.

Our two main facilities are in Torrance, California and Ann Arbor, Michigan. In addition, TTC is

currently constructing an important proving ground and vehicle evaluation facility near Phoenix, Arizona.

TTC is a relatively small company. We have only about 270 employees. About 170 of them are located in Ann Arbor, or nearby at offices in Detroit and Plymouth, Michigan, and about 90 work in Torrance or nearby Gardena, California. The remaining handful of employees are located at our Arizona office and other small offices near manufacturing facilities in Georgetown, Kentucky and Fremont, California.

B. The Expansion Of TTC's Professional/Technical And Administrative Staffs.

TTC's functions remained relatively limited during its first ten years and, consequently, TTC had only about 70 employees as of January, 1989. Since then, TTC's mission has expanded from transferring sophisticated design and engineering knowledge of Japanese-designed vehicles to development of a broader U.S.-based research, development and design capacity, and TTC has grown at a much faster pace. Our expansion has resulted in our hiring increasing numbers of U.S. employees. Thus, while as of January, 1989, U.S. employees made up about 40% of our total employee

population, the number of U.S. employees today is more than five times what it was in January, 1989, and Americans account for over 60% of our workforce. Moreover, our U.S. employees are working in important positions. In the last two and one-half years alone, more than 60 U.S. employees -- which amounts to approximately 25% of our current employee population -- have been hired for or promoted to salaried professional and managerial positions.

As TMC moves more production of its cars to the United States and TTC achieves its status as the center for research and development activities for TMC's North American operations, it is expected that more of TTC's technical staff employees will be doing work associated with U.S.-based production operations, and that consequently more U.S. employees will be hired for and/or promoted into positions of significant responsibility.

C. Employment Policies And Procedures.

As a small, new company TTC had relatively few written employment policies and procedures. As TTC has expanded and continues to expand, additional policies and procedures have been and will be developed. However, from its creation, it has been the policy of TTC to make all

employment decisions, including those relating to hiring, promotion, training, performance evaluation, and compensation, without regard to a person's race, color, national origin, citizenship, sex, age, physical handicap, medical condition, religion, veteran's status or marital status, based on qualifications to perform the required work. TTC scrupulously adheres to this policy and unequivocally denies that it is now discriminating, or ever has discriminated, against any U.S. employee.

Thank you.

Mr. LANTOS. Thank you very much.

May I ask how many employees does your operation have in the United States?

Mr. TOMITA. Right now, we have about 270 employees total.

Mr. LANTOS. About 270 employees?

Mr. TOMITA. Yes.

Mr. LANTOS. Who is the president?

Mr. TOMITA. Mr. Kimbara.

Mr. LANTOS. He is a Japanese citizen?

Mr. TOMITA. Yes, he is.

Mr. LANTOS. Underneath him, who is next?

Mr. TOMITA. Mr. Masaki. He is executive vice president.

Mr. LANTOS. He is also a Japanese citizen?

Mr. TOMITA. Yes, he is.

Mr. LANTOS. Under him, what is the next layer?

Mr. TOMITA. Group vice president.

Mr. LANTOS. How many group vice presidents are there?

Mr. TOMITA. We have two group vice presidents.

Mr. LANTOS. What are their nationality?

Mr. TOMITA. Both are Japanese.

Mr. LANTOS. Both are Japanese?

Mr. TOMITA. Yes.

Mr. LANTOS. Now we are down to the third level. The top man is a Japanese citizen. The second level is a Japanese citizen. The third level where there are two people, they are both Japanese citizens.

Mr. TOMITA. Yes.

Mr. LANTOS. Now we come to the fourth level.

At the fourth level, how many people are there?

Mr. TOMITA. The fourth level is general managers. We have 16 general managers.

Mr. LANTOS. There are 16 general managers?

Mr. TOMITA. Yes.

Mr. LANTOS. And what is their citizenship breakdown?

Mr. TOMITA. Two out of 16 are Americans.

Mr. LANTOS. And 14 are Japanese?

Mr. TOMITA. Yes.

Mr. LANTOS. And two are Americans?

Mr. TOMITA. Yes.

Mr. LANTOS. That is a very bleak picture.

Mr. TOMITA. I beg your pardon, Mr. Chairman.

Mr. LANTOS. I said that is a very bleak picture. That means that you go down to the fourth level in your hierarchy for a total of 20 people, and there is no American citizen at the top level, and there is no American citizen at the second level, and there is no American citizen at the third level. And at the fourth level, 2 out of 16 are American citizens.

Is that your testimony, sir?

Mr. TOMITA. Mr. Chairman, the president, Mr. Kimbara, is not a full-time American resident. So actually, the top person——

Mr. LANTOS. How much time does he spend here?

Mr. TOMITA. Just on a business trip basis. So actually, the top level is executive vice president.

Mr. LANTOS. Well, I understand.

Mr. TOMITA. Thank you. And we have 40 managers.

Mr. LANTOS. Well, let us not go beyond these core numbers. Let me deal with these core numbers.

How many of those top 20 people are women?

Mr. TOMITA. Right now, we do not have any women general managers or vice presidents.

Mr. LANTOS. So of the top 10 people, there is not a single woman?

Mr. TOMITA. No. But as we expand, we would expect more women——

Mr. LANTOS. Hope springs eternal, we understand.

Mr. TOMITA [continuing]. In the management ranks.

Mr. LANTOS. Of the total 20 people, how many are of Hispanic background?

Mr. TOMITA. Hispanic?

Mr. LANTOS. Yes.

Mr. TOMITA. There are no Hispanic people.

Mr. LANTOS. Of the top 20 people, how many are of African-American background?

Mr. TOMITA. I beg your pardon, Mr. Chairman.

Mr. LANTOS. How many of the top 20 individuals in your company are African-Americans?

Mr. TOMITA. There are no African-Americans.

Mr. LANTOS. OK. So what you are saying is that you are committed to equal employment opportunity, but at the top level there is no U.S. citizen. And at the second level, there is no U.S. citizen. And at the third level, there is no U.S. citizen. At the fourth level, there are 2 of 16. Of the top 20 people, there is not a single woman, not a single woman.

Mr. TOMITA. No.

Mr. LANTOS. Not a single black American, and not a single Hispanic American.

Mr. TOMITA. Mr. Chairman, we have been for a long time just a small company until recently.

Mr. LANTOS. No matter how big you are, you sure do not seem to give women much of an opportunity to get a good level position. You have 270 people.

Mr. TOMITA. We only had 70 people.

Mr. LANTOS. You have 270.

Mr. TOMITA. Right now, yes.

Mr. LANTOS. Of the 270 people, you have 20 people at the top, and not one of them is a woman.

Mr. TOMITA. Yes. And also, Mr. Chairman——

Mr. LANTOS. There are a lot of able women, you know. There are a lot of able women.

Mr. TOMITA. Yes.

Mr. LANTOS. They serve in the U.S. Senate, and they serve in the U.S. House of Representatives. They are chief executive officers of New York Stock Exchange listed corporations. They serve on the Supreme Court. They serve as Governors for some of our States. The United Kingdom got along pretty well with the Prime Minister. India got along pretty well with a Prime Minister.

I mean it is very difficult to have much understanding of an employment policy that in four layers cannot find a single slot for a woman.

Mr. TOMITA. Yes, but Mr.——
Mr. LANTOS. Let us move down to the fifth level.
How many people do you have at the fifth level?
Mr. TOMITA. We have 40 managers.
Mr. LANTOS. You have 40 managers?
Mr. TOMITA. Yes.
Mr. LANTOS. How many of those are women?
Mr. TOMITA. We have one woman manager.
Mr. LANTOS. There are 39 men at the fifth level and one woman?
Mr. TOMITA. Yes, correct.
Mr. LANTOS. How long have you had that lady?
Mr. TOMITA. I believe 1½ years.
Mr. LANTOS. One and a half years.
Is she doing well?
Mr. TOMITA. Yes, she is.
Mr. LANTOS. I am sure she is.
Mr. TOMITA. Yes, yes.
Mr. LANTOS. Does she have a chance to rise in the corporation, do you think?
Mr. TOMITA. I think so.
Mr. LANTOS. You are a great optimist.
Mr. TOMITA. Yes.
Mr. LANTOS. You are a great optimist.
Mr. SHAYS. Mr. Tomita, why do you not just explain how many U.S. citizens you have working in those management positions?
Mr. TOMITA. Yes, we have 17 out of 40.
Mr. SHAYS. How many?
Mr. TOMITA. Seventeen, one-seven.
Mr. SHAYS. Out of 40 managers, there are 17?
Mr. TOMITA. Yes, sir. I think that we have been making great progress in this situation.
Mr. SHAYS. You can put on the record now what you wanted to put on the record.
Ms. CORMIER. Thank you very much, Congressman Shays. What I wanted to enter into the record, we brought with us some exhibits that we would request that you enter into the record. And the first exhibit is a chart showing a breakdown of the bank's work force by national origin. And I prepared this in response to the committee's request for this information.
The second exhibit that we would like to introduce is a series of letters that the bank's human resources department writes every year to employment agencies who refer candidates to us. This letter explains the bank's employment opportunity policies and hiring goals. And it specifically requests that they refer black, Hispanic, minority applicants as well as women for mid and senior level management positions.
And the third set of exhibits that I would like to introduce is the bank's equal employment opportunity statement, which our president distributes every year to all employees and applicants. This statement is signed by the president, and is an expression of our equal employment opportunity policy and practice.
And the statement also specifically advises employees if they have a problem or do not believe that they have been treated

fairly, it gives them a remedy there to contact the human resources department and speak to myself.

So with your permission, I would like to enter these into the record.

Mr. SHAYS. I will be happy to do that.

Ms. CORMIER. Thank you very much, Congressman Shays.

Mr. LANTOS. Without objection.

Ms. CORMIER. Thank you.

[The information follows:]

NATIONAL ORIGINS OF U.S. PERSONNEL

NATIONAL ORIGIN	ADMINISTRATIVE	OFFICERS	EXECUTIVES
Anglo-North American	14	5	15
Hispanic	11		3
Japanese	11	3	3
Chinese	10	3	2
Filipino	9	2	
Afro-American	6	1	
Eastern European	4		
Southeast Asian	3	1	
Pacific Islander	1	3	3
Korean	1		1
	70	18	27

Compiled on July 2, 1991 at the request from the Employment and Housing Subcommittee of the Committee on Government Operations of the U.S. House of Representatives

DAI-ICHI KANGYO BANK
OF CALIFORNIA

January 1, 1991

STATEMENT OF EQUAL EMPLOYMENT OPPORTUNITY POLICY

Throughout the history of our Bank, it has been our policy to offer equal employment opportunity to all individuals without regard to race, creed, ancestry, color, sex, marital status, age, national origin, physical handicap, medical condition or because he or she is a disabled veteran or a veteran of the Vietnam Era. This Policy applies to all phases of the employment process including: recruiting, hiring, promotions, compensation, benefits, training, layoffs, recalls, transfers and terminations and Bank-sponsored educational, social and recreational programs.

All employment and promotion decisions are to be made on the basis of job-related criteria, and all such decisions are to be made so as to further the principle of equal employment opportunity.

I have assigned Linda Cormier the primary responsibility for planning and monitoring the implementation of our equal employment opportunity policy. She will be given my full support in this assignment and will report to me on the Bank's progress.

Complaints of discrimination or harassment based on factors such as race, religion, national origin, age, sex, or handicap may be reported through the steps outlined in the Employee Grievance Procedure or reported directly to Linda Cormier at (213) 612-6480. All complaints will be handled confidentially to the maximum extent possible.

1990 was a challenging year for our Bank and we expect 1991 will also be difficult and challenging. Our goal is to meet these challenges while ensuring continuing equal opportunity for all employees and applicants. Our success will demand teamwork and I cannot stress too strongly the need for full and active support for Dai-Ichi Kangyo Bank of California's equal employment opportunity policy from all employees, and from those organizations with whom we have business relationships.

We are counting on all employees to give this policy positive and constructive support. Each of us will be confronted with situations that provide an opportunity to put this policy into practice. I will expect each of you to do your part to further this effort to provide equal job opportunities for applicants and employees.

Ryusabufo Wada
President and Chief Executive Officer

770 WILSHIRE BOULEVARD LOS ANGELES CALIFORNIA 90017 213 612-6400

February, 1990

STATEMENT OF EQUAL EMPLOYMENT OPPORTUNITY POLICY

I wish to take this opportunity to reiterate to all concerned my personal position, as well as that of Dai-Ichi Kangyo Bank of California, regarding equal employment opportunity.

As we enter the 1990's, it has been and will continue to be the policy and practice of Dai-Ichi Kangyo Bank of California not to discriminate against any applicant or employee because of race, color, religion, sex, age, national origin, handicap, or because he or she is a disabled veteran or a veteran of the Vietnam Era. This policy extends to every phase of the employment process, including: recruiting, hiring, training, promotion, compensation, benefits, transfers, layoffs, recalls and Bank-sponsored educational, social and recreational programs.

All employment and promotion decisions are to be made on the basis of job-related criteria, and all such decisions are to be made so as to further the principle of equal employment opportunity.

I have assigned Linda Cormier the primary responsibility for planning and monitoring the implementation of our equal employment opportunity policy. She will be given my full support in this assignment and will report to me on the Bank's progress.

1989 was a year of growth for the Bank and our goal is to continue this growth while ensuring continuing equal opportunity for all employees. The 1990's will be challenging for all of us. I cannot stress too strongly the need for full and active support for Dai-Ichi Kangyo Bank of California's equal employment opportunity policy from all employees, and from those organizations with whom we have business relationships.

M. Shimizu
Chairman of the Board and President

DAI-ICHI KANGYO BANK
OF CALIFORNIA

January 14, 1989

STATEMENT OF EQUAL EMPLOYMENT OPPORTUNITY POLICY

I wish to take this opportunity to make clear to all concerned my personal position, as well as that of Dai-Ichi Kangyo Bank of California, regarding equal employment opportunity.

It has been and will continue to be the policy and practice of Dai-Ichi Kangyo Bank of California not to discriminate against any applicant or employee because of race, color, religion, sex, age, national origin, handicap, or because he or she is a disabled veteran or a veteran of the Vietnam Era. This policy extends to every phase of the employment process, including: recruiting, hiring, training, promotion, compensation, benefits, transfers, layoffs, recalls and Bank-sponsored educational, social and recreational programs.

All employment and promotion decisions are to be made on the basis of job related criteria, and all such decisions are to be made so as to further the principle of equal employment opportunity.

I have assigned to Linda K. Cormier the primary responsibility for planning and monitoring the implementation of our equal employment opportunity policy. She will be given my full support in this assignment and will report to me on the Bank's progress.

I cannot stress too strongly the need for full and active support for Dai-Ichi Kangyo Bank of California's equal employment opportunity policy from all employees, and from those organizations with whom we have business relationships.

M. Shimizu
Chairman of the Board and President

770 WILSHIRE BOULEVARD LOS ANGELES CALIFORNIA 90017 213-612-6400

DAI-ICHI KANGYO BANK
OF CALIFORNIA

1988 EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

At Dai-Ichi Kangyo Bank of California we are committed to the goal of providing equal job opportunities to applicants and employees regardless of their race, religion, national origin, ancestry, age, sex, color, handicap, medical condition, or marital status. Staff members are judged by the work actually performed. Management is charged with the responsibility of providing a work environment where individuals can achieve their full potential within the Bank. It is the policy of the Bank to prevent and prohibit discriminatory conduct on the job, including the making of sexual advances or any other type of employee harassment by co-workers, subordinate employees, or superiors. Dai-Ichi Kangyo Bank of California stresses the importance of individual performance and fulfillment of legal and social responsibilities through the innovative use of our individual and collective talents and services. Our legal responsibilities will be fulfilled by responding to the requirements outlined by the Equal Employment Opportunity legislation. Violations of these policies will be subject to appropriate disciplinary action, including counselling, suspension or discharge. I am personally committed to these objectives and also expect Dai-Ichi Kangyo Bank of California's employees to commit themselves to these objectives.

Dai-Ichi Kangyo Bank of California's objective is for each region, job category and level of management to represent the ethnic and sex distribution in the relevant hiring area. This objective is implemented through our "Affirmative Action Program". The Personnel Department establishes specific goals for hiring and promoting in an effort to bring the minority and female percentages to a parity level. The responsibility for the establishment, implementation and monitoring of Affirmative Action Goals rests with the Personnel Officer who is the Affirmative Action Officer for the Bank. Complaints of discrimination or harassment based on factors such as race, religion, national origin, age, sex, or handicap, may be reported through the steps outlined in the Employee Complaint Procedure or reported directly to the Personnel Officer. All complaints will be handled confidentially to the maximum extent possible.

It is important that each employee understand the Bank's Equal Employment Opportunity Policy. The laws of the State of California and the Federal Government require that the Bank maintain and publicize to all employees and applicants this Policy of Equal Employment Opportunity. Each of us will be confronted frequently with situations that provide an opportunity to put this policy into practice. I will expect each of you to do your part to further this effort to provide equal job opportunities for applicants and current employees.

Hisao Kobayashi
Chairman of the Board and President

770 WILSHIRE BOULEVARD LOS ANGELES CALIFORNIA 90017 213-612-6200

DAI-ICHI KANGYO BANK
OF CALIFORNIA

January 22, 1991

Dear Sir or Madam:

On behalf of Dai-Ichi Kangyo Bank of California, I want to call to your attention our policy of Equal Employment Opportunity, specifically as it relates to the hiring process.

In accordance with this policy, we are committed to ensuring that:

-Selection criteria bear a direct relation to job performance and do not screen out individuals on the basis of their race, color, sex, religion, national origin, age or other protected classification;

-All applicants have an equal opportunity to compete for employment;

-Employment practices do not eliminate qualified applicants of any race, color, sex, religion, national origin or age group at a significantly higher rate than other qualified applicants;

-Qualified handicapped individuals are protected against discrimination in hiring and promotion;

-Qualified disabled and Vietnam-era veterans are protected against discrimination in hiring and promotion.

In addition, we make an active effort to generate an applicant pool which reflects the availability of qualified women and minorities in the applicable labor market. In support of this important objective, we ask your cooperation in helping us identify qualified minority and female applicants to fill openings as vacancies occur.

Please share this letter with those in your organization who are involved in making applicant referrals. Thank you.

Very truly yours,

Linda Cormier

Linda Cormier
Vice President

DAI-ICHI KANGYO BANK
OF CALIFORNIA

March 24, 1990

Dear Sir or Madam:

On behalf of Dai-Ichi Kangyo Bank of California, I want to call to your attention our policy of Equal Employment Opportunity, specifically as it relates to the hiring process.

In accordance with this policy, we are committed to ensuring that:

-Selection criteria bear a direct relation to job performance and do not screen out individuals on the basis of their race, color, sex, religion, national origin, age or other protected classification;

-All applicants have an equal opportunity to compete for employment;

-Employment practices do not eliminate qualified applicants of any race, color, sex, religion, national origin or age group at a significantly higher rate than other qualified applicants;

-Qualified handicapped individuals are protected against discrimination in hiring and promotion;

In addition, we make an active effort to generate an applicant pool which reflects the availability of qualified women and minorities in the applicable labor market. In support of this important objective, we ask your cooperation in helping us identify qualified minority and female applicants to fill openings as vacancies occur.

Our affirmative action goals this year are to try to increase the number of Black and Hispanic employees at all levels and the number of women in senior and mid-management positions.

Please share this letter with those in your organization who are involved in making applicant referrals. Thank you.

Sincerely,

Linda Cormier

Linda Cormier
Vice President

DAI-ICHI KANGYO BANK
OF CALIFORNIA

April 10, 1989

Dear Sir or Madam:

On behalf of Dai-Ichi Kangyo Bank of California, I want to call to your attention our policy of Equal Employment Opportunity, specifically as it relates to the hiring process.

In accordance with this policy, we are committed to ensuring that:

-Selection criteria bear a direct relation to job performance and do not screen out individuals on the basis of their race, color, sex, religion, national origin, age or other protected classification;

-All applicants have an equal opportunity to compete for employment;

-Employment practices do not eliminate qualified applicants of any race, color, sex, religion, national origin or age group at a significantly higher rate than other qualified applicants;

-Qualified handicapped individuals are protected against discrimination in hiring and promotion;

-Qualified disabled and Vietnam-era veterans are protected against discrimination in hiring and promotion.

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Our affirmative action goals this year are to try to increase the number of Black and Hispanic employees at all levels and the number of women in senior and mid-management positions.

Please share this letter with those in your organization who are involved in making applicant referrals. Thank you.

Very truly yours,

Linda Cormier
Vice President

700 WILSHIRE BOULEVARD, LOS ANGELES, CALIFORNIA 90017 213.612-6200

DAI-ICHI KANGYO BANK OF CALIFORNIA

March 28, 1988

Dear Sir or Madam:

On behalf of Dai-Ichi Kangyo Bank of California, I want to call to your attention our policy of Equal Employment Opportunity, specifically as it relates to the hiring process.

In accordance with this policy, we are committed to ensuring that:

-Selection criteria bear a direct relation to job performance and do not screen out individuals on the basis of their race, color, sex, religion, national origin, age or other protected classification;

-All applicants have an equal opportunity to compete for employment;

-Employment practices do not eliminate qualified applicants of any race, color, sex, religion, national origin or age group at a significantly higher rate than other qualified applicants;

-Qualified handicapped individuals are protected against discrimination in hiring and promotion;

-Qualified disabled and Vietnam-era veterans are protected against discrimination in hiring and promotion.

In addition, we make an active effort to generate an applicant pool which reflects the availability of qualified women and minorities in the applicable labor market. In support of this important objective, we ask your cooperation in helping us identify qualified minority and female applicants to fill openings as vacancies occur.

Our goals this year are to increase the number of Black and Hispanic employees at all levels and the number of women in Officer and management positions.

Please share this letter with those in your organization who are involved in making applicant referrals. Thank you.

Very truly yours,

Linda Cormier
Vice President

770 WILSHIRE BOULEVARD LOS ANGELES CALIFORNIA 90017 / 213 612-6400

Mr. SHAYS. Let me just say a few things. I have been trying to go along during this hearing, because I did not know where they would lead us. And I have felt somewhat cautious about these hearings. But in one sense, even though the chairman would rightfully acknowledge that no company would have an open policy that would choose to discriminate, I found it at least important that you would establish publicly that your policy is not to discriminate, and that the companies abide by the laws of this country. And I think that has to be put on the record.

But then it becomes an obvious conclusion when the chairman asked the basic question and the purpose of this hearing was to look at the first, second, third, and fourth levels. And I would just tell you my conclusion. That the policy is not consistent with the practices. The chairman made the point that someone individually can choose to discriminate or may as a cultural difference practice discrimination.

As an American looking at these three Japanese companies, it is clear that you have very few United States citizens in high positions. It is clear that you have practically no women, and practically no blacks, and practically no Hispanics.

And so the conclusion that I draw is that in the positions that matter to the company that there is very real discrimination in all three companies. Obviously, the last statistics that we heard from you, Mr. Tomita, were the most shocking of all, very candidly.

And I would also have to tell you that of all of the witnesses that we have had before us, I found Mr. Horton's the most persuasive.

I would just want to ask this question. Because I know that the chairman said that cultural differences are not a factor in disobeying the law. But if an American company were in Japan, would that American company have to abide by all of the laws that exist in Japan, or could we follow our own practices in Japan? I would start with Mr. Saito.

As a former Peace Corps volunteer, I am very uneasy talking about cultural differences. The first lesson that we learned when we were in the Peace Corps was that we needed to abide by the customs and practices of that country. And I will say that my basic reading of the Japanese society is that you would expect American companies in Japan to abide by every law, every regulation, and every policy requirement that exists in Japan. And I just want to know in your own words if that is true.

Mr. SAITO. When an American company goes to Japan to operate there, they are expected to obey Japanese laws, yes.

Mr. LANTOS. Are they expected or do they have to?

Mr. SAITO. They must obey.

Mr. LANTOS. Mr. Wada.

Mr. WADA. Excuse me. The same question?

Mr. LANTOS. Yes.

Mr. WADA. Yes, I have the same answer as Mr. Saito has.

Mr. SHAYS. The Japanese Government would not tolerate for a minute if an American company came into Japan and did not abide by those laws of Japan. Is that correct?

Mr. TOMITA. Yes. American companies in Japan must obey Japanese law. I believe the company who is running business in the United States must obey——

Mr. SHAYS. That is not my question, sir.

If an American company was in Japan, would it have to abide by all the rules and laws and regulations of Japan?

Mr. TOMITA. I am not familiar with that, but I believe yes.

Mr. SHAYS. Are you not a Japanese national?

Mr. TOMITA. Yes, I am a Japanese national.

Mr. SHAYS. So you are not aware of whether an American company in Japan would have to abide by Japanese laws?

Mr. TOMITA. Yes. The answer is yes, they have to obey the Japanese law.

Mr. SHAYS. Let me, Mr. Tomita, take your response. What would you conclude if you were a member of this committee with the response that you made that—I had felt you gave the most sincere and emphatic response to the questions, well, actually all of you did, but your response was fairly clear that in this country you are dedicated to following the laws of the United States. Is that not true? I mean you made that statement. How do you think we on this committee should view your statistics that basically show that you hire no women, you hire no blacks, you hire no Hispanics, and you hire in the fifth level a minority are American people at the fifth level. What would you think our conclusion should be about that?

Mr. TOMITA. Mr. Congressman, I have to explain the situation of our company. Our job is especially unique. We have a technical research and development job and also our customer is exclusively Toyota Motor Corp. in Japan. So we have to work very close with Toyota Motor Corp. in Japan to fulfill their demands. And we have been trying to transplant technical knowledge to the United States. It has taken a long time, though, but we have been trying and now, as our role has expanded we are able to hire more American people and to have more American people who know well about Toyota Technical Center and Toyota Motor Corp., too.

Mr. SHAYS. When we passed title VII of the civil rights bill, we made reference to nationality. The chairman is right, I think we did that—we are looking at American companies that would be discriminating or that might discriminate against nonnational Americans, Hispanics and other Spanish-speaking citizens from all over the world and so on. But it is very clear that national origin applies also to Americans, at least in title VII. The Court has ruled—it is my understanding the Court has ruled that a company can bring in its top executive and say that he/she could be a national, and in your case, a Japanese national out of business necessity. But that's my understanding as far as the Court has ruled. And it is clear to me that there is not upward mobility for Americans in your companies. And that we are going to have to take a very good look and see about other companies. I guess it just adds weight to what you asked, Mr. Chairman, in having the GAO make a greater study.

Somehow, I have this feeling that if we came here a year from now that there will be changes. I just have this feeling. And I do not know if it is the Japanese culture that you push things to the final point, but it seems to me you have nowhere to go. You have got to do a better job of integrating your companies with more Americans.

Mr. Chairman, I do not have any other questions. I am happy we held these hearings. I am grateful to all our witnesses. I do want to say for the employers that we have before us that I do not accept in toto that in every instance the people before us this morning were necessarily discriminated against. It could be that in some cases they did not perform their jobs, so I am not willing to accept in every instance with every employee that we had that there was discrimination.

But in the broader picture, looking at your statistics—forget the witnesses that we had this morning—looking at your own statistics, which you answered to the chairman, it is clear that there is not the mobility for Americans that there should be. And it is ironic because—and I will conclude with this. I am convinced that our countries are only going to succeed when there is a greater goal between countries so that American citizens are invited to live in Japan, so you know more about Americans and we know more about you, but we have got a ways to go.

Mr. LANTOS. I only have one specific and one general comment. I want to thank my colleague. We have one more witness after this panel.

It specifically relates to your testimony and I am sorry I have to read this, but the facts presented here are at such total variance with the enunciated high principles that they really stick in my craw. In your prepared statement, your concluding paragraph reads as follows:

> From its creation, it has been the policy of Toyota to make all employment decisions including those relating to hiring, promotion, training, performance evaluation and compensation, developing jobs without regard to a person's race, color, national origin, citizenship, sex, age, physical handicap, medical condition, religion, veteran status or medical status . . . based on qualifications to perform the required work. Toyota scrupulously adheres to this policy and unequivocally denies that it is now discriminating or ever has discriminated against any U.S. employee.

The reality is in a different universe. The facts that you presented do not have the slightest tangential relationship to your statement. The two do not even meet. It is not that your statement is partially true. It is not that your statement is a little bit true. It is not even that it is an teensy-weensy bit true. It has nothing to do with the reality.

My grandmother taught me a long time ago that paper is patient. You can put down anything on a piece of paper and there will not be a bark back at you and nobody will tell you this is a lie, this is not true, this is preposterous, the opposite of it is true. And that is where we are.

As a matter of fact, if I may just comment on Congressman Shays' last observation, which I think was a very astute observation as all of his are. The first panel of witnesses, although they were very impressive, they testified under oath, and I presume they told the truth, was not nearly as damning as this panel of witnesses.

We understand that high-paid lawyers and public relations executives can put on paper any sentence that is required of them. We understand that. The difficulties of trying to make those sentences join with reality, you have not achieved that. This is not your statement, I know it is not, because it took a lot of technical

knowledge to make this statement that none of those things matter. "It has been the policy of Toyota to make all employment decisions," all employment decisions, "including those relating to hiring, promotion, training, performance evaluation, compensation, without regard to a person's race, color, national origin." But there is not an American in the first four levels. It just happened.

I mean a 5-year-old child would not believe this. That is your problem. That is your problem. A 5-year-old child of average intelligence would not believe these statements. This subcommittee does not believe these statements. What is far worse, the American people do not believe these statements. You can put anything on a piece of paper, but when you ask for facts and the facts are diametrically opposed, then the statements stand exposed naked—naked—in their emptiness. That is the problem.

I want to thank the panel for appearing.

Our last witness is Ms. Selwyn Whitehead, the executive director of the Greenlining Coalition.

[Witness sworn.]

Ms. Whitehead, your exact statement is entered in the record in its entirety. The committee would appreciate if you would summarize your oral statement.

STATEMENT OF SELWYN WHITEHEAD, EXECUTIVE DIRECTOR, GREENLINING COALITION

Ms. WHITEHEAD. I will be very brief.

First of all, I want to thank you, Chairman Lantos, for having these hearings. This is an issue that is of critical importance to the Greenlining Coalition. I am here on behalf of that organization and, briefly, we represent the prominent civil rights, small business, economic development, and disabled groups here in California, organizations like Latino Issues Forum, the League of United Latin American Citizens, Chinese for Affirmative Action, and the Mexican-American Political Association, just to name a few.

I will just briefly—I will not even bother telling you of our track record, I will get right to the facts.

The Greenlining Coalition is concerned about unchecked Japanese investment in our society without corresponding commitment to people of color and women and the potential negative impact and influence it will have on American values. We believe and encourage responsible foreign investment in our country only when foreign corporations make an effective guarantee of equal opportunity for all Americans, including the 13.5 million people of color in the State of California and the almost 8.5 million Caucasian women.

We believe that, under the right circumstances, legitimate American concerns, including those of people of color, regarding major Japanese investment can be addressed and positively in constructive fashion. But we do have reasons for legitimate concern.

In the area of media, for example, Matsushita Electronics alone has annual revenues of $44 billion, more than 12 times that of Walt Disney Studios. Along with Sony and MCA, Japanese companies control a quarter of all American motion picture production.

In the last 2 years alone, the top 10 Japanese investors have bought more than $13 billion in American companies, including Sony's $1 billion acquisition of Columbia Studios and $2 billion acquisition of CBS Records.

People of color and women in America feel and fear that foreign investors, particularly those from homogeneous societies, may be unwilling or unable to encourage the broad dissemination of controversial views and will impose, or possibly impose, negative racial and ethnic stereotypes here in our country.

To check this situation, we believe that it is imperative that Japanese-owned American-located companies recruit, hire, and promote people of color into key decisionmaking roles throughout the organization. Key decisionmaking roles, not just entry-level clerical or janitorial positions.

We are not Japanese bashing. We do not believe in this type of activity. We are not racists. We have real concerns about the implied and in fact discrimination by Japanese-controlled companies in our country.

It appears that some Japanese decisionmaking executives in most of their organizations have little use for people of color and women, in general, and blacks in particular. Some have voiced publicly their firmly held belief that all blacks are poor, uneducated thieves.

According to Hiroshi Kashiwagi of the Japan Pacific Resource Network, an intercultural nonprofit education organization that we work very closely with, this is an opinion that is held by most Japanese-owned companies.

I have brought along for your review a look at the demographics in our State. The Caucasian women take up half of the white population. Currently in California 70 percent of our population are people of color and white women. We are not looking at the next century to change our culture. We are there now. We need employment opportunities now.

I just briefly want to compare two organizations that the Greenlining Coalition has firsthand knowledge with, and they are both in the banking industry.

Let's examine two Japanese banks in California with very different approaches to employment practices: one willing to seize the opportunity to increase market share and build up an employee pool and customer base that reflects and will continue to reflect the diversity of California in the years to come. That bank being the Bank of Tokyo's Union Bank.

The other willing to challenge the will of fair-minded people in our State to the point of having the conversion of one of its subsidiaries challenged by us and other community groups to the point where ultimately it was compelled to withdraw its application. That bank being Mitsui Manufacturer's Bank.

In the case of Union, as part of a comprehensive equal opportunity employment and economic development agreement with the historically underserved communities of California in 1988, that bank agreed to strive to ensure that 60 percent of all new senior level management appointments made during the next 5 years will go to women and people of color. I am happy to report the progress that has been made to date under the leadership of Vice Chairman Jim

Gibson, that we in the Greenlining Coalition have no doubt that Union Bank will meet and exceed this goal. With an ethnically diverse executive level and a board of directors that is heading toward diversity, Union Bank has positioned itself to be a financial leader in California, in the economy now and in the years to come.

The other bank is Mitsui Manufacturer's Bank. I brought along a copy of their annual report for your review, but basically none of the senior level management people are people of color, other than Japanese people. There are no white women. There are no women of color. There are only two Caucasian males in any decisionmaking role. One happens to be the president of Mitsui Manufacturer's here in California, Jerry Johnson. But it is our contention that all decisions are made by that Japanese bastion back in Tokyo that is completely homogeneous.

How can an organization like that effectively market their product, which is financial resources, in a State that looks like this?

We are even more frightened by global implications. In my testimony you will find that according to American Banker, no U.S. bank is among the world's 20 largest. The top six are all Japanese. Seven of the top 10 are Japanese. The other three are French. The largest American bank, Citicorp, comes in 21st place.

Banks provide the fuel of economic growth and vitalization in communities they choose to serve in. Soon it appears that most banks in our country will be foreign controlled. To be truly effective here in our country of rich ethnic diversity, they must be personed by individuals from the widest array of talent this country can offer.

This is good for banks and it is good for the community. All Japanese-owned banks and American banks could follow Union Bank's lead.

In closing, I have a few concluding remarks and a few recommendations. Given the combination of poor affirmative action policies and achievements by Japanese, and American companies, for that matter, and the lack of resources to substantially alter an embarrassing past record, the Greenlining Coalition urges a foreign acquisition mobilization pact strategy be developed by our Congress that would encourage, if not compel, major changes in commitments to affirmative action as a condition for investment in the United States economy.

The Coalition believes that no foreign corporation or nation should be permitted to make a significant investment in the United States or make an investment in crucial industries such as banking, communications, or media, without developing an enforceable affirmative action commitment that includes, where necessary, a radical change in the corporate culture like that agreed to by the Bank of Tokyo's subsidiary, Union Bank. Such an affirmative action commitment makes good business sense.

Specifically, we recommend that this plan include specific and substantial enforceable goals that should set out and ensure that the boards of directors and upper management, as well as blue collar work force, reflect the diversity, including the racial and gender diversity, of the communities they choose to serve.

Specific and significant goals should be set for awarding contracts to persons of color and women-owned businesses and professional trade persons.

Specific outreach to people of color, women and individuals who are poor and disabled, including employment training, should be developed and made a significant part of that corporate culture.

Philanthropic contributions should be geared to the interests and needs of the community, particularly communities of color and low income, rather than special artistic or cultural interests of absentee CEOs.

And finally, depending on the industry, other specific commitments should be made, such as in the banking industry, where specific commitments for residential and small business loans to low-income communities should be made.

On behalf of the Greenlining Coalition, I want to thank the House Employment and Housing Subcommittee and Chairman Lantos for conducting these hearings and giving the Greenlining Coalition this opportunity to participate.

[The prepared statement of Ms. Whitehead follows:]

The Invisible

Persons of Color and Women Employment Opportunities

In Japanese-Owned Banks In California

Testimony of Selwyn Whitehead of the Greenlining Coalition
on behalf of:

American G.I. Forum, the California Council of Urban Leagues, the Center for Southeast Asian Refugee Resettlement, Chinese for Affirmative Action, the Coalition of Bay Area Woman-Owned Businesses, Consumer Action, the Filipino-American Political Association, Filipinos for Equal Rights, Interdenominational Ministerial Alliance, Latino Issues Forum, the League of United Latin American Citizens, the Mexican-American Political Association, Oakland Citizens Committee for Urban Renewal (OCCUR), Rainbow Coalition (National Chair), the San Francisco Black Chamber of Commerce, and the World Institute on Disability.

For the Congressional Employment and Housing Subcommittee
of the
Committee on Government Operations

August 8, 1991

Contents

I. Greenlining Coalition Background

The Greenlining Coalition was formed in 1979 as a persons and community of color/low-income individuals/micro-business development/women/ disabled individual/consumer advocacy Coalition fighting for the economic empowerment of its constituents.

The Coalition employes community-based policy development, litigation, legislative advocacy, and administrative petitions to encourage Corporate America to abandon its institutionalized practice of "redlining" (the erection of arbitrary race, gender and class based barriers) that have limited the access of people of color, women, the low-income and disadvantaged small business owners to the resources necessary to plot their economic destiny and maintain their economic viability. The goal of the Coalition is to cause Corporate America to abandon its standard practice of redlining and begin to greenline.

In other words, we use a little existing law, statue and regulation, for example the Community Reinvestment Act of 1977. A lot of reasearch and timing. A mutually respectly relationship with the press. Add something as unheard of as the truth, plus a healthy dose of luck, to do a little good for our clients and we believe ultimalely our entire California community.

Our Coalition is comprised of a core group of 16 multiethnic multicultural Civil Rights, equal employment opportunity, small business and housing development advocacy organizations, such as the American G.I. Forum, the California Council of Urban Leagues, the Center for Southeast Asian Refugee Resettlement, Chinese for Affirmative Action, the Coalition of Bay Area Woman-Owned Businesses, Consumer Action, the Filipino-American Political Association, Filipinos for Equal Rights, Interdenominational Ministerial Alliance, Latino Issues Forum, the League of United Latin American Citizens, the Mexican-American Political Association, Oakland Citizens Committee for Urban Renewal (OCCUR), Rainbow Coalition (National Chair), the San Francisco Black Chamber of Commerce, and the World Institute on Disability.

The Coalition is represented by the Law Offices of Public Advocates which also contributes financially and otherwise to the continuing success of the Coalition.

You should know right off that that we believe in and are fighting for a new Bill of Rights, lest you every doubt our *insanity*. We sincerely believe that every American is entitled to access to:

1. Affordable and available quality housing.

2. Affordable and available quality health care.

3. A high quality education.

and

4. **Meaningful employment opportunities**, including those of self-employment.

To accomplish these objectives we believe we must take a leadership role in helping form the necessary corporate fair share mind set and develop strategies for moving corporate America to provide the necessary Bill of Rights development resources.

As such we ask all corporations to do five things:

1. Develop and implement a plan, over a reasonable amount of time, to change the composition of their Board of Directors to generally reflect the ethnic and gender make up of their service area.

2. Develop and implement a plan, over a reasonable amount of time, to change the composition of their senior executive level of management to generally reflect the ethnic and gender make up of their service area.

3. Develop and implement a plan to outreach and market their products or services to people of color, low-income individuals, women and the disabled.

4. Develop and implement a people of color and women business purchasing program.

5. Develop and implement a program to make sure a portion of their charitable dollar goes to non-profit organizations that are controlled and operated by people of color, low-income individuals, women and the disabled.

The Coalition's successes include:

1. Negotiating, in concert with Assemblywoman Gwen Moore, the 1988 historic settlement in which California's major public utilities committed to do 20% of their contracting with California's women and minority owned businesses by the year 1993;

2. Negotiating the historic Comprehensive Equal Opportunity Pledge with Southern California Edison which included a provision to have

30 percent of its top 500 management consist of women and/or minorities by the year 2000;

3. Negotiating the Security Pacific Bank 1989 ten year $2.4 billion Community Reinvestment Act Program to promote low-income and inner city development; and,

4. Negotiating with Bank of America the five billion dollar low-income housing and minority economic development enforceable commitment in April 1991.

And most germaine to our discussions today;

Negotiating the 1988 Community Reinvestment Agreement with Union Bank in which the bank agreed to earmark at least $45 Million a year in 1988 and 1989 to minority equity participation in areas of housing, economic and employment development; Union recently doubled that the amount for 1990 and 1991.

II. Greenliners Are Concerned About Unchecked Japanese Investment In Our Society Without a Corresponding Commitment to People of Color and Women, and the Potential Negative Influence of Japan on American Values.

We believe in and encourage responsible foreign investment in our country only when the foreign corporation makes effective guarantees for equal opportunity for all Americans, including the 13.5 million people of color and 8.35 million white women in California.

We believe that under the right circumstances, legitimate American concerns, including minority concerns, regarding major Japanese investments can be addressed in a positive and constructive fashion.

However we take pause and have legitimate concerns.

In the area of media for example, Matsushita Electronic alone has an annual revenue of $44 billion; more than 12 times that of Walt Disney Studios. Along with Sony and MCA, Japanese companies control a quarter of all American motion picture production.

Over the last two years, the top 10 major Japanese investors have bought more than $23 billion in American companies, including Sony's billion dollar acquisition of Columbia Studios and two billion dollar acquisition of CBS Records.

People of Color and women in America fear that foreign investors, particularly those from homogeneous societies, may be unable or unwilling to encourage a broad dissemination of controversial views and/or will impose the negative racial and ethnic stereotypes on Americans.

To check this situation we believe it is imperative for the Japanese owned, America located company, to recruit, hire and promote people of color and women into key decision making roles throughout the organization.

We are not Japan-bashing, we have real concerns about implied and in fact discrimination by Japanese controlled companies in our country.

It appears that Japanese decision making executives in most Japanese companies have little use for persons of color in general and no use blacks in particular. Some have voiced publicly their firmly held belief that all blacks are "poor uneducated thieves".

According to Hiroshi Kashiwagi of the Japan Pacific Resource Network, the Inter-cultural nonprofit education organization the Greenlining Coalition works closely with, this is the sentiment of most Japanese managers stationed in our country. This is unacceptable.

III. Persons of Color and Women Employment Opportunities: A Tale of two Japanese Banks.

If it is true what is reported in the book, published by the Japan Society, *Japanese Companies In American Communities*, that "...a good corporate citizen in Japan is one that provides stable jobs to its workers and pays taxes to the government.", and we don't doubt this to be true in Japan; then why is it that most American-based Japanese-controlled companies find it difficult follow this, their own tenant, in America when it comes to people of color and women?

We in the Greenlining Coalition think it has a lot to do with race and gender discrimination.

The Banking industry can be illustrative of the opportunity and challenge we all face in making sure foreign interests respect the letter and spirit of our employment laws when they come to reap the benefits of our economy.

Let us examine two Japanese banks in California with very different approaches to employment practices. One willing to seize the opportunity to increase market share and build up an employee pool and customer base that reflects and will continue to reflect the diversity of California in the years to come: The Bank of Tokyo's Union Bank. The other willing to challenge the will of fair minded people of our State to the point of having the conversion of one of its subsidiaries challenged by us and other community groups to the point where it was ultimately compelled to withdraw its application: Mitsui Taiyo Kobe Bank's Mitsui Manufacturers Bank

The Bank of Tokyo's Union Bank

Union Bank, as part of its comprehensive equal opportunity employment and economic development agreement with the historically underserved communities in California in 1988, agreed to strive to ensure that 60% of the new senior management appointments made during the next five years will go to women and people of color. We have been very happy with the progress the bank has made todate under the leadership of Vice Chairman James Gibson, and have no doubt that the Union Bank will meet and exceed this goal.

With an ethnically diverse executive level and a board of directors headed towards diversity, Union Bank has positioned itself to be a financial leader in our California economy for years to come.

Mitsui Taiyo Kobe Bank's Mitsui Manufacturers Bank

In the Mitsui Taiyo Kobe Bank 1990 Annual Report there are listed 103 names under the heading of Board of Directors. All appear to be males. All are Japanese. This list includes 22 Advisory Board members. The report also lists 14 key or "Senior Managing Directors" all are not only Japanese males, but are all at least 58 years old.

That same report lists Mitsui's top 97 management persons. All are Japanese, and all appear to be male.

That same report lists 61 division heads, including 20 in the United States and 19 in Europe. All 61 are male. 59 are Japanese. None are non-Japanese persons of color.

At the time of our protest to block the conversion of Mitsui Taiyo Kobe's New York based trust subsidiary into a bank in 1989, none of its top 25 California-based management was Hispanic, African-American or non-Japanese Asian. Currently, no one on its Board of Directors is a non-Japanese person of color. And only one of its 12 branch offices is headed by a person of color.

As a result, Mitsui's all Japanese male control from Tokyo is unable to understand the marketing, lending and service needs of America's most diverse business culture and California's $700 billion economy. This homogeneous Japanese male bastion has, in large measure, replicated itself in California, merely substituting white males for Japanese males where absolutely necessary, albeit infrequently.

According to the *American Banker*, no U.S Banks are among the Worlds 20 Largest. The top six are Japanese. Seven of the top 10 are Japanese. The largest American bank, Citicorp, came in in 21st place. The world's top 10 banks last year by asset size:

1.	Dai-Ichi Kangyo Bank	$428.2 billion
2.	Sumitomo Bank Ltd	$409.2 billion
3.	Mitsui Taiyo Kobe Bank Ltd	$408.8 billion
4.	Sanwa Bank Ltd	$402.7 billion
5.	Fuji Bank Ltd	$399.5 billion
6.	Mitsubishi Bank Ltd.	$391.5 billion
7.	Credit Agricole Mutuel	$305.2 billion
8.	Bankque Nationale de Paris	$291.8 billion
9.	Industrial Bank of Japan Ltd	$290.1 billion
10.	Credit Lyonnais	$287.3 billion

Banks provide the fuel of economic growth and vitalization in the communities they chose to serve. Soon, it appears, most banks in our country will be foreign controlled. To be truly effective here in our country, of rich ethnic diversity, they for must be personed by individual from the widest array on talent our country can offer. This is good for the banks and the communities they serve. All should follow Union Bank's lead.

IV. Conclusions and Recommendations

Japanese corporations have a poor record regarding discrimination at home and abroad. So, too, do American corporations. Both should be regulated when major acquisitions are involved.

Given the combination of poor affirmative action policies and achievements at American companies and the lack of present resources to substantiality alter an embarrassing past record, the Greenlining Coalition urges a foreign acquisition mobilization strategy that encourages, if not compels major changes in commitments to affirmative action as a condition for investment in the United States economy.

The Coalition believes that no foreign corporation or nation should be permitted to make a significant investment in the United States or to make an investment in crucial industries, such as banking, communications or media, without developing an enforceable affirmative action commitment that includes, where necessary, a radical change in corporate culture, like that agreed to by the Bank of Tokyo's subsidiary Union Bank.

Such affirmative action commitments make good business sense.

The Coalition therefore makes the following recommendations which we believe should be applicable to all foreign acquisitions, not just Japanese acquisitions, where such involve either crucial industries or major investments. In offering these recommendations, we would also like to note that it might be well for Congress to consider such legislation for all significant acquisitions and mergers, including those between American-owned companies.

1. Specific and substantial enforceable goals should be set to ensure that the board of directors and upper management, as well as blue-collar workforce, reflect the diversity, including the racial and gender diversity, of the community to be served.

2. Specific and significant goals should be set for awarding contracts to persons of color and women owned businesses and professional trades persons.

3. Specific outreach to people of color, women, and individuals who are poor or disabled, including employment training, should be developed and made a significant part of the corporate culture.

4. Philanthropic contributions should be geared to the interests and needs of the community, particularly of color and low-income communities,

rather than, for example the specialized artistic or cultural interests of absentee CEOs.

5. Depending on the industry, other specific commitments should be made, such as in the banking industry, where specific commitments for residential and business loans to low-income and of color communities should be made.

On behalf of the Greenlining Coalition, I want to thank the House Employment and Housing Sub committee of the Committee on Government Operations and Chairman Lantos for conducting these hearings and giving the Greenlining Coalition this opportunity to participate.

Respectfully Submitted,

Selwyn Whitehead
Executive Director
The Greenlining Coalition
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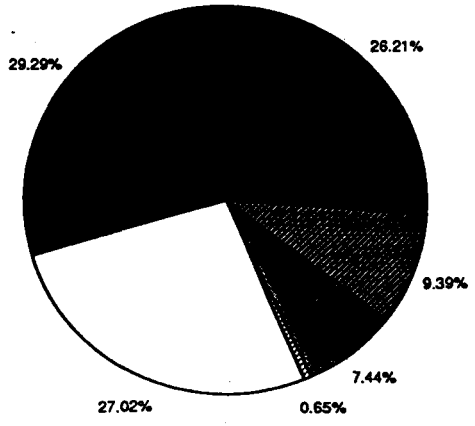
Attachments

Union Bank Commitments
Community Service Action Plan 1988-1990
Community Service Action Plan 1991-1992
Greenlining Coalition's Report
Mitsui Bank: The Worst Community Record in California

California's Population



As of the 1991
Census Correction

California's Total Population as of the
1991 Census Correction is: 30,900,000

Ethnic Group	Number	Percent of Total
Whites	17,400,000	56.3
Hispanics	8,100,000	26.3
Asians	2,900,000	9.4
African American	2,300,000	7.4
Others	200,000	0.6

Ethnic Group	Number of Women
Whites	8,350,000
Hispanics	4,050,000
Asians	1,450,000
African American	1,150,000
Others	100,000

Total Minorities: 13,500,000 or 43.7%
Total Women and Minorities: 21,850,000 or 70.7%

Mitsui Bank:
The Worst Community Record in California

A Report by
the Greenlining Coalition

Presented to
Chairman Alan Greenspan
and the Federal Reserve Board

Public Hearing on
Mitsui Bank Merger

Los Angeles, California
March 21, 1991

"Mitsui Bank is unlikely to be able to understand or serve California's needs, since its California operations are controlled by 100 Japanese males from Tokyo." -- George Dean, President, California Council of Urban Leagues.

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Mitsui Bank: The Worst Community Record in California

"Mitsui equals redlining. Less than one percent of the dollar value of Mitsui's California loans go to the Hispanic or African-American community." -- Jim Jefferson, San Francisco Black Chamber of Commerce.

"Imagine a population twice the size of Switzerland being redlined. That's Mitsui's policy toward 13 million California minorities." -- Ben Benavidez, National President, Mexican-American Political Association.

Preface: The Second Largest Bank in the World

Were it not for the unique CRA skills and community organizing of groups such as Communities for Accountable Reinvestment (CAR), the Center for Community Change, and the California Reinvestment Committee, there would not be a hearing today.

Mitsui Taiyo Kobe, the world's second largest bank, has over $400 billion in assets, or a sum far greater than the total assets of all California-based banks and almost four times as large as the Bank of America. Mitsui is run from Tokyo by 100 Japanese males. No minorities or women effectively participate in any key decisions affecting California's 13 million minorities.

Mitsui's California operations are part of an international marketing strategy that ignores the needs of California minorities whose aggregate population easily exceeds that of Switzerland. As a result, Mitsui makes virtually no low-income housing or consumer loans and generally ignores the business needs of small, minority- and women-owned businesses.

Based on the data provided, Mitsui has the worst CRA and minority record of any Japanese-owned bank in California and the worst record of any California bank with one billion dollars or more in assets.

The Greenlining Coalition favors Japanese banking investments in California (see Section I) and has set forth an eight point CRA blueprint to enable Mitsui to successfully do business in California and to serve as a guideline for all foreign-owned banks (see Section II).

Sections III and IV discuss Mitsui's exclusionary pro-Japanese male management policies that produce redlining and CRA violations. Section V discusses the puppet nature of the California subsidiary of the world's second largest bank.

Section VII discusses the refusal of Mitsui's Chairman, who meets in Los Angeles monthly, to meet with any community or minority groups.

Sections VI and VIII discuss the failure of the Federal Reserve to secure sufficient data on Mitsui's international operations as they affect California and the procedural weaknesses of this public hearing, the first held by the Federal Reserve since May 1986.

Mitsui Bank: The Worst Community Record in California[1]

I. The Greenlining Coalition Welcomes Responsible Japanese Banks

The Greenlining Coalition, consisting of 18 minority and consumer groups[2], strongly welcomes Japanese and other foreign investments if they benefit all Americans, including minorities and women. In a historic November 29, 1989, letter to the Japanese Minister of Foreign Affairs, Taro Nakayama, the Coalition issued a welcome to Japanese banks that fully comply with the Community Reinvestment Act of 1977 and U.S. Equal Opportunity laws. And in June 1988, the Greenlining Coalition negotiated a Comprehensive Equal Opportunity and CRA Agreement with the Bank of Tokyo (Union Bank), with whom it continues to work closely and for whom it has much praise.

The Coalition has recently opposed the mergers of major American banks that violate the Community Reinvestment Act. Coalition opposition included a protest before the Federal Reserve in November 1989 against Wells Fargo Bank and a February 1991 FDIC protest against the Bank of America.

The Greenlining Coalition is also part of a national effort (the National Urban Economic Summit) which recently met with Federal Reserve Chairman Alan Greenspan (January 17, 1991) on the need for greater CRA compliance and leadership by the Federal Reserve.

II. Eight Point CRA Greenlining Plan for Mitsui Manufacturers Bank and Other Foreign-Owned Banks

In order to approve Mitsui Manufacturers Bank's U.S. merger plans, and to ensure that MMB is in compliance with CRA guidelines and will be capable of future CRA compliance, the Greenlining Coalition offers an eight point CRA Greenlining Plan to *greenline instead of redline*. It should be considered in the context of, and not separate from, the proposals of the Los Angeles-based community groups whose input and needs are crucial.

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[1] Prepared by Robert Gnaizda of Public Advocates and Selwyn Whitehead, Coordinator of the Greenlining Coalition – 1535 Mission Street, San Francisco, CA 94103, (415) 431-7430.

[2] Coalition members include: American G.I. Forum, the California Council of Urban Leagues, Center for Southeast Asian Refugee Resettlement, Chinese for Affirmative Action, Coalition of Bay Area Woman-Owned Businesses, Comision Femenil Mexicana Nacional, Consumer Action, Filipino-American Political Association, Filipinos for Equal Rights, Interdenominational Ministerial Alliance, Latino Issues Forum, League of United Latin American Citizens, Mexican-American Political Association, Oakland Citizens Committee for Urban Renewal (OCCUR), Oakland Union of the Homeless, Rainbow Coalition (National Chair), San Francisco Black Chamber of Commerce, and the World Institute on Disability.

This plan, based primarily on the size of Mitsui's California subsidiary (MMB), reflects the reality that MMB is run and funded by a Tokyo giant whose resources exceed the total banking assets of all California-based banks.

All eight points have been adopted, with variations, by one or more of California's five largest banks and could be a model for all foreign-owned banks seeking to expand in the United States. The eight points are as follows:

1. Mitsui commit to a 10-year CRA plan, as has Security Pacific Bank;

2. Two percent of MMB's assets each year be committed to CRA low-income housing and inner city economic development ($24 million based on this year's asset size) and possibly $100 million a year if Mitsui's long-term expansion strategies are accomplished;

3. Mitsui Manufacturers Bank set specific long-term minority contract goals, as has Union Bank (owned by the Bank of Tokyo), which has set a 20 percent goal;

4. Mitsui Manufacturers Bank commit a minimum of three percent of its net profits before taxes, or a sum equal to one-twentieth of its assets, whichever shall be larger, for charitable contributions directed at low-income and minority housing and economic development. (Citicorp has often achieved this three percent level, as have many chemical and oil companies);

5. Mitsui Manufacturers Bank develop a 10-year plan to ensure that it can effectively market to minorities. This includes at least one-third of its California Board and top management being minority. (Currently, 49 percent of its primary service area is comprised of minorities.) Wells Fargo is moving in this direction with the recent addition of three minorities to its Board.

6. Mitsui Limited of Tokyo recognize the importance of its international functions and commit to appointing at least one African-American, one Hispanic, and one non-Japanese Asian to its Tokyo-based Board of Directors within two years and a similar number to its Tokyo-based Advisory Board;

7. The Chairman and/or President of Mitsui Limited commit to a semi-annual CRA meeting in Los Angeles with community leaders. (The Chair apparently travels to California at least 12 times a year for MMB Board meetings);

8. Mitsui Manufacturers Bank develop an aggressive and effective African-American outreach, marketing and advertising campaign and develop a similar comprehensive multilingual campaign for the Asian and Hispanic communities (similar to the program of Union Bank).

Expansion Plans

"...Mitsui will emphasize the continued expansion of the size and scope of its U.S. operations..." (Mitsui of Japan's 1989 Annual Report, p. 19). "Our strategic goals in the Americas include expanding..." (Mitsui of Japan's 1990 Annual Report, p. 20). "...[T]he [U.S.] division will continue to increase its presence in the United States..." (Mitsui of Japan's 1990 Annual Report, p. 21).

Assuming the accuracy of these expansion statements, MMB is likely to be five to 10 times larger by the end of this decade. If this comes about, the dollar value of the above commitments should be larger. For example, a five-fold increase would mean a 10 year CRA commitment of *$1.2 billion*.

III. Mitsui's Top 100 Japanese Males-Only Leadership Has No Knowledge of the Inner City

The Community Reinvestment Act requires the Board of Directors and top management to be actively involved and knowledgeable about CRA activities in the local communities. Mitsui Manufacturers Bank and its parent, Mitsui Limited, are so structured and staffed that they cannot meet this minimum requirement. For example:

1. Mitsui of Japan's Annual Report (pp. 88-89) has two pages listing the Board of Directors. It lists 103 names. All appear to be males. All are Japanese. This includes 22 Advisory Board members. The 14 key or "Senior Managing Directors" are not only all Japanese males, but all are at least 58 years old.

2. Mitsui of Japan's 1990 Annual Report lists 97 top management persons. All 97 are Japanese, and all appear to be male.

3. Mitsui of Japan's 1990 Annual Report lists 61 division heads, including almost 20 in the U.S. and 19 in Europe. All 61 are males. Fifty-nine of 61 (or 97 percent) are Japanese males. None are U.S. minorities.

4. As of the time of the protest, none of Mitsui Manufacturers Bank's top 25 California-based management was Hispanic, African-American or non-Japanese Asian. Today, it still has no African-Americans, Chinese-Americans, Korean-Americans, Vietnamese Americans or Filipino-Americans among its top management. And only one of its 12 branch offices is headed by a minority, an Hispanic.

5. None of Mitsui Manufacturers Bank's 10 Board members is a minority.

6. Most surprising, although hardly most damning, is the make-up of MMB's powerless uncompensated local advisory boards. There are 77 members on the Board.

   - None is Asian, despite the presence of 2.8 million Asian-Americans in California.
   - Only two of 77 are Hispanic, despite California's Hispanic population of 7.7 million.
   - Only six of 77 of its powerless advisory board members are women, despite the fact that over a third of all new businesses in California are being started by women.
   - No data was available on African-Americans as of the time of this report.

Thus, Mitsui's all-Japanese male control from Tokyo is unable to understand the CRA marketing, lending and service needs of America's most diverse business culture, California's $700 billion economy. This homogeneous Mitsui male bastion has, in large measure, replicated itself in California, merely substituting white males for Japanese males where necessary, albeit infrequently. (See Section VII for evidence of isolation from the community.)

Further, the Coalition is prepared to document that Mitsui lacks the multilingual skills to effectively serve or market to California's 7.7 million Hispanics, or to most of California's 2.8 million non-Japanese Asians. And, we are prepared to prove that Mitsui has never marketed itself to California's 2.3 million African-Americans. (See unrefuted assertions by Coalition since December 13, 1989, letter to Federal Reserve seeking an audit.)

IV. Based on the Continental Illinois Decision, Mitsui Has an Unacceptable CRA Record

As of the relevant period, the period prior to the protest[3], Mitsui made no housing loans or consumer loans and virtually no business loans to 13 million minority Californians. This is equivalent to having headquarters in Zurich and Oslo and refusing to lend to any residents of Switzerland or Norway, with a combined population of 11 million.

Mitsui's record today is not much better than the record at the time of the protest. Even its rosy and unverified March 21, 1991, report presented today shows modest

[3] As set forth in the Federal Reserve's Continental Illinois Bank decision of February 1988, the key period is prior to the protest.

CRA results and *no* long-term CRA commitments. From this report, we cannot determine:

(a) the dollar amount, if any, of housing, consumer or business loans to 2.3 million African-Americans, 2.8 million Asians or 7.7 million Hispanics;

(b) the dollar amount, if any, of very low-income housing loans;

(c) whether the Chairman of the Board of Mitsui Limited[4], or the Chairmen of Mitsui Manufacturers Bank, Yutaro Hayashi, both of whom MMB claims meet on CRA issues, have ever been in East Los Angeles or South Central Los Angeles or have ever met with any African-American or Hispanic community leaders. (All that is known is that someone with possibly no authority at Mitsui Limited claims to have met with hundreds of community and business groups.)[5]

Nothing to United Way or March of Dimes?

The vagueness of Mitsui Manufacturers Bank's March 21, 1991, Federal Reserve report is best illustrated by its so-called specifics:

(a) It claims (p. 8) to have invested 11 percent in a City of West Hollywood loan pool. It fails to state the amount of the pool. Is it 11 percent of $10,000? We are unable to determine this.

(b) It claims (p. 9) to participate in State Guaranteed Small Business Loans, but it doesn't state the amount of its participation.

(c) It claims (p. 9) to participate in California Expert Finance Programs, but it doesn't state the amount of its participation.

(d) It claims (pp. 9-10) to participate in a Business Cash program, but it doesn't state the amount.

(e) It claims (p. 10) to have an unsecured credit program, but it doesn't state the amount.

(f) It claims (pp. 10-11) to have a commitment to multi-family housing. Yet it admits it financed only 13 low- and moderate-income units and fails to specify

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[4] The current key Mitsui Limited persons are its Chairman, Yasuo Matsushita, and its President, Kenichi Suematsu.

[5] And Mitsui's local Advisory Boards have no non-Japanese Asians and possibly just two Hispanics among 77 board members who reach out to the community.

if any of the 13 were low-income loans, as opposed to moderate-income loans, and fails to state the location of, or race of, those who benefitted.

(g) It claims (pp. 14-16) that it is *considering* eight community projects; however, it provides no financial data, and most are only in the talking or planning stage and could be cancelled as soon as its merger is approved.

(h) It suggests (p. 20) that substantial charitable contributions have been made. Yet this $400 billion giant lists only one specific contribution: $37,000 to United Way by its *employees*, not its management. An example of its phantom charitable achievements is the following CRA statement:

"*Employees* of MMB participated in the March of Dimes annual walk-a-thon in Los Angeles, in which *24* business organizations [only one of which was Mitsui] raised $26,000." (MMB 3/21/91 Federal Reserve report, p. 20. Emphasis added.)

V. Mitsui Manufacturers Bank has Ready Access to Over 400 Billion Dollars

Mitsui Manufacturers Bank's CRA accomplishments as of the time of the protest were nil, and it was embarrassingly out of compliance with virtually all equal opportunity requirements, despite past rubber stamp CRA approval by federal agencies. Today, as a result of the many community protests led by CAR, and the Federal Reserve's decision to hold a public meeting, MMB's CRA record has improved, albeit modestly and inadequately. (Under the Federal Reserve Board's February 1988 Continental Illinois decision, post-protest improvements are given limited, if any, weight.)

It is the Coalition's position that Mitsui's record must, in part, be viewed from the perspective of its readily available resources from its $400 billion parent which controls every significant financial action of MMB and every significant management action of MMB.[6] Equally important, Mitsui of Japan regularly infuses MMB with capital, including a recent multimillion dollar infusion from Tokyo, determined by its top 100 Japanese male management.

This recent Tokyo infusion alone is believed to have exceeded by ten-fold the total CRA charitable contributions made by Mitsui over the last decade.[7]

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[6] We are prepared, if given access to its telephone, FAX, correspondence to and from Japan, plus management shifts from Japan, to document daily control of all key aspects of the California operations.

[7] In fact, Mitsui's legal expenses for this CRA protest alone may easily exceed its charitable contributions since it opened in California 29 years ago.

This Tokyo financial infusion is believed to have exceeded Mitsui's total CRA commitment to very low-income housing from 1980 until the protest in December 1989.

This recent Tokyo financial infusion is believed to exceed by many times the total of small business loans to African-American businesses or to Hispanic businesses in 1990.

This recent Tokyo financial infusion is believed to exceed by many times the total of all consumer loans made by Mitsui to African-Americans, Hispanics or low-income families in 1990.

This recent Tokyo financial infusion is believed to exceed by many times the total of all home loans made to African-Americans residing in the inner cities or to Hispanics residing in inner cities in 1990.

Thus, whether Mitsui will comply with or become a leader in CRA is solely based on the whims of its exclusive all-Japanese male Tokyo Board of Directors, Advisory Board, division heads and top 100 management.

No one present at this hearing from Mitsui has the power to alter this, no one.[8]

VI. The Federal Reserve May Not Have Sufficient Information to Make Any Decision

In order to determine the scope of MMB's CRA achievements and future commitments, the Federal Reserve must know:

(a) the financial, management and marketing relationship between the $400 billion Mitsui Tokyo operation and the one billion dollar Mitsui California operation; and

(b) the dollar amount of Mitsui's past CRA contributions, if any, to California's 13 million minorities, a population twice that of Switzerland.

This information has been *unsuccessfully* sought by the Greenlining Coalition from both Mitsui and the Federal Reserve, commencing with the Coalition's December 13, 1989, protest letter requesting an audit and detailed information.

This information has also been sought in the Coalition's recent letters to the Federal Reserve of December 21, 1990, and to Federal Reserve Chairman Alan Greenspan on February 7, 1991. Mitsui has refused to comply with these requests, including a

[8] It appears that even Yutaro Hayashi, MMB's local Chairman and Chief Executive Officer (CEO), will not be present at this hearing.

refusal at our March 12, 1991, meeting with its California President. The request to Chairman Greenspan is attached as Exhibit A.

Upon information and belief, the Federal Reserve does not have this crucial information.

VII. Mitsui's Real Leadership has Never Met with Any California Groups

Mitsui Manufacturers Bank claims that it has had hundreds, if not thousands, of contacts with minorities. The reality is that no top Mitsui of Japan executive has had contact, and they are the only ones with the power to change the wholly-owned subsidiary. Its Chairman[9] and President Suematsu of Japan have declined all four formal requests for a meeting in either California or Tokyo. The first request was by letter of December 13, 1989. They have also declined our requests for an international phone conference to address the problems.

In contrast, the Chairmen of Wells Fargo, Bank of America, and Security Pacific meet with the Coalition, including four meetings with Security Pacific's Chairman in 1990. And even the very busy Chairman of the Federal Reserve, Alan Greenspan, met for an hour with the Coalition on January 17, 1991.

Contracts, Not Contacts

As Mario Obledo, a member of the Coalition and the National Chair of Jesse Jackson's Rainbow Coalition, said: "Minorities want contracts, not contacts." As set forth in Sections III and IV, the contracts and the lending have not occurred.

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[9] Allegedly an active member of the Mitsui Manufacturers Bank who attends its California meetings on a monthly basis.

Exhibit A

Letter to Chairman Alan Greenspan
February 7, 1991

The Greenlining Coalition

1535 Mission Street
San Francisco, CA 94103
Phone: (415) 431-7430
Fax: (415) 394-8262

July 30, 1991

Alan Greenspan
Chairman
Federal Reserve System
20th Street & C Street, NW
Washington, DC 20551

Re: The Federal Reserve Board Should Release Its CRA Findings on Mitsui Bank

Dear Chairman Greenspan:

On behalf of the Greenlining Coalition, we are writing to urge you to release the Federal Reserve Board's CRA findings on Mitsui Bank.

We consider Mitsui's July 17th withdrawal of its merger application to be an acknowledgement of its own discriminatory practices -- practices which Mitsui officials know cannot withstand the glare of the U.S. regulatory spotlight.

After expending considerable resources -- including over $50,000 in attorney fees -- attempting to expose Mitsui's CRA noncompliance, the Greenlining Coalition and the millions of taxpayers we represent are anxious to see the results of the Federal Reserve Board's regulatory investigation. We believe that your findings will document Mitsui's anti-consumer record.

Though its officials no longer seek the Board's permission to merge, Mitsui remains a key player in a marketplace which you regulate. As such, Mitsui appears likely to continue its *redlining ways* unless regulatory and community pressure compel it to change.

The Federal Reserve Board's public evaluation will let Mitsui know that its blatant disregard for the legitimate credit needs of low- and moderate-income communities will not be tolerated. In addition, the Board will be sending a message to all foreign banks that each financial institution

doing business in America must adhere to U.S. regulatory standards.

The American people must know your evaluation in order to make sound decisions about to whom they may entrust their savings. We look forward to obtaining the results of your CRA evaluation of Mitsui Bank. Thank you for your attention to this important matter.

Sincerely,

Selwyn Whitehead
Executive Director
Greenlining Coalition

John C. Gamboa
Executive Director
Latino Issues Forum

Robert L. Gnaizda
Senior Attorney
Public Advocates

Edith Adame
President
San Francisco La Raza Lawyers

Alex Esclamado
President
Filipino-American Political Association

George Dean
President
California Council of Urban Leagues

Ben Benavidez
President
Mexican-American Political Association

Mario Obledo
National Chair
Rainbow Coalition

★★Monday, December 17, 1990

San Francisco Examiner
BUSINESS

'Greenliners' win OK to challenge bank

ed to examine its inority loan record

y Susan Burkhardt
THE EXAMINER STAFF

A coalition of California minori- and business groups has for the rst time successfully challenged a ank's community reinvestment cord.

The Greenlining Coalition, rep- sented by San Francisco's Public dvocates Inc., Friday won an un- recedented public hearing from e Federal Reserve Board to con- der the adequacy of Mitsui Man- facturers Bank's involvement in mmunity lending. Since 1985, 37 milar requests for meetings have en denied.

Primarily a business bank, Los ngeles-based Mitsui has two of- ces in the Bay Area, one in San rancisco, the other in San Jose. A cent merger made the $1.3 billion nk's parent company, The Mit- i Taiyo Kobe Bank Ltd., of Tok- yo, the second largest in the world.

The Fed said it is seeking com- ment from people wishing to tes- tify on Mitsui's community rein- vestment performance. The Fed will announce the time and place of the hearing at a later date.

"Our charge is that Mitsui Bank refused to do any residential lend- ing to blacks and Hispanics in the state of California and (few) if any small business loans to blacks or Hispanics," said Public Advocates attorney Bob Gnaizda, who lodged several complaints with the Fed before the hearing was granted. Mitsui does little residential lend- ing to begin with.

The Greenlining Coalition claimed that Mitsui had refused to even consider developing an effec- tive Community Reinvestment Act plan dealing with minority hiring, lending, philanthropic contribu- tions and outreach.

"The hammer the coalition holds is the possibility of blocking

[See COALITION, C-1]

◆ COALITION from C-1

Fed to examine bank's loan policy

the Mitsui-Taiyo Kobe merger in the United States," Gnaizda said. Mitsui negotiated with declined to comment Friday.

The public meeting will be held in connection with the application by the Japanese parent company to convert one U.S. subsidiary, Taiyo Kobe Bank and Trust, New York, from a nonbank trust company into a bank, an important step in consolidating its U.S. operations.

"This tells Japanese investors that they have to be aggressive in seeking out minority customers and in meeting equal opportunity requirements in the U.S.," Gnaizda said. "It has important international implications."

FEDERAL RESERVE press release

For immediate release July 22, 1991

The Federal Reserve Board today announced that The Mitsui Taiyo Kobe Bank, Limited, Tokyo, Japan ("Mitsui"), has withdrawn its application to convert Taiyo Kobe Bank and Trust Company, New York, New York ("TKBTC"), from a nonbank trust company to a commercial bank.

In connection with the merger creating Mitsui, the Board noted in a March 28, 1990 Order, that Mitsui would be required to obtain Board approval to convert TKBTC to a commercial bank and that the Board would consider the Community Reinvestment Act ("CRA") record of Mitsui's subsidiary bank, Mitsui Manufacturers Bank, Los Angeles, California ("Bank"), in connection with that application.

The Board also stated that the Bank had not implemented in all respects the type of CRA program outlined in the statement of the Federal financial supervisory agencies regarding the CRA. The Board stated that a public meeting on the Bank's CRA performance would be held on Mitsui's application to convert TKBTC to a commercial bank unless the record developed on that application, in the Board's view, resolved the issues regarding the Bank's CRA performance.

On December 14, 1990, the Board ordered a public meeting on the CRA issues raised in Mitsui's application. The public meeting was convened in Los Angeles, California, on March 21, 1991, at which nineteen representatives of community and public interest groups, and public officials and individuals criticized the Bank's CRA performance.

Subsequent to this meeting, the Board received written notice from Mitsui dated July 17, 1991, that it had withdrawn its application.

Mr. LANTOS. Ms. Whitehead, let me thank you for a singularly eloquent and powerful statement. The purpose of these hearings is to achieve fairness, which it seems to me is what you are groping for and what hopefully jointly we will be able to achieve.

The testimony at this hearing, as at our previous hearing in Washington, was extremely disturbing because it confirmed the judgment that led the subcommittee to commence this series of hearings. There is profound discrimination against U.S. citizens in general, against various subgroups of U.S. citizens. Some of these subgroups representing a majority, women and various ethnic minorities, whether it is black Americans, Hispanic Americans and others.

We will not rest until every company operating in the United States fully abides by all the laws of our Nation. It is a privilege to function here and the minimum requirement for achieving that privilege is to obey the law. And I want to thank you for appearing.

Ms. WHITEHEAD. Thank you very much.

Mr. LANTOS. This hearing is concluded.

[Whereupon, at 2:20 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

EMPLOYMENT DISCRIMINATION BY JAPANESE-OWNED COMPANIES IN THE UNITED STATES

TUESDAY, SEPTEMBER 24, 1991

HOUSE OF REPRESENTATIVES,
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2247, Rayburn House Office Building, Hon. Tom Lantos (chairman of the subcommittee), presiding.

Present: Representatives Tom Lantos, Rosa L. DeLauro, Ileana Ros-Lehtinen, and Christopher Shays.

Also present: Representatives John Conyers, Jr., and John W. Cox, Jr.

Staff present: Stuart E. Weisberg, staff director and counsel; Lisa Phillips and Joy R. Simonson, professional staff members; June Livingston, clerk; and Christina J. Tellalian, minority professional staff, Committee on Government Operations.

Mr. LANTOS. The Subcommittee on Employment and Housing will please come to order.

This is the third in a series of hearings by the Employment and Housing Subcommittee to examine employment discrimination by Japanese companies operating in the United States. The first hearing was held in Washington in July, the second in San Francisco in August. The response to those two hearings has been enormous. They have generated more letters and phone calls to the subcommittee than anything since the HUD scandal hearings. We have, apparently, touched a nerve.

Most of the letters have been complimentary and very favorable. From Hawaii to Florida have come communiques from current and former employees of Japanese firms concerning their personal experiences with discrimination. This is a real and serious problem that needs to be addressed.

Now let me say, as I have said at earlier hearings, what these hearings are not about. These hearings are certainly not about Americans of Japanese ancestry. Americans of Japanese ancestry have made an enormous contribution to the life of this Nation in a tremendous variety of fields. These hearings are not about foreign investment. This subcommittee, certainly its chairman, welcomes foreign investment. Foreign investment in the United States benefits the United States in a wide variety of ways.

These hearings basically deal with a very simple issue: Are companies owned by non-U.S. citizens operating in the United States

obliged to obey the law? That is all. Are companies owned by foreigners obliged to play by the same rules in the United States that American-owned companies are obliged to play by. That is the only issue.

So far we have heard almost a dozen witnesses describe their experiences working at Japanese-owned companies in the United States. They testified about being discriminated against because they were U.S. citizens. Some were black and some were white. Some were men and some were women. They represented the full spectrum of religious backgrounds, ethnic origins. But the one common denominator which accounted for discrimination against them was that they were U.S. citizens. As one worker at our hearing last month said, "I felt like a foreigner in my own land."

Many Japanese companies treat their U.S. subsidiaries like a farm team. The bulk of the top management positions at Japanese companies in the United States are reserved for male Japanese nationals, who come and go on a rotating basis back and forth from Japan American workers are effectively shut out from advancement opportunities, and they are shut out from the decisionmaking process.

If the term glass ceiling has any meaning, it certainly does in this arena. We have had before us some of the most talented, capable, impressive, knowledgeable, experienced men and women who hit the glass ceiling for no reason other than being United States citizens.

At today's hearing we will be exploring with the Immigration and Naturalization Service the practice by Japanese companies of rotating personnel from Japan to this country for a few years. We will also hear from the presidents of three Japanese companies: DCA Advertising, Recruit, and Ricoh. We are in no sense an adjudicatory body, but in the spirit of fairness we want to give these companies an opportunity to respond to the serious allegations made by their former employees and to tell us about their personnel policies.

It was not possible for some companies, including Nomura Securities, Sumitomo, Sanwa Bank, and Mitsubishi Motor Sales of America to be here today, but these companies will testify at a future hearing. This subcommittee will not rest until this issue is resolved. Other witnesses today will describe employment discrimination in one of the world's largest securities firms, a major trading corporation, and a car rental company.

Again, as at all previous hearings, I wish to reiterate my highest regard for the Japanese-American community which has contributed so enormously to the economic, political and cultural life of the United States, and which, on the basis of communications to this subcommittee, fully supports these hearings.

Through academic studies and from some of our correspondence we hear about the different culture, attitude, and the employment practices in Japan This background may explain, but it cannot and will not excuse the actions which violate our laws. As I said at the California hearing, if a company locates in the United States and hopes to grow and profit from our market, we expect, and yes, we demand that it follow the law. It is as simple as that.

I am very pleased to call on my colleague, the ranking Republican on the subcommittee, Ms. Ileana Ros-Lehtinen of Florida.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I want to thank you for your continued interest and attention to the area of discrimination in the workplace. As I am sure all of us will agree, discrimination even in its most subtle form will not be tolerated. Our country has made great strides and great progress in the last 50 years especially trying to overcome open and blatant discrimination, and it would be very unfortunate if we were to move backward in this area after so many people have fought and struggled to move ahead.

Discrimination today has taken on a new identity. Although it might not be as candid and as outspoken as it was 50 years ago, we still must make the commitment to ensure that all people receive equal rights and equal opportunities.

In 1863, President Lincoln said: "Four score and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal." Every person has a responsibility to uphold the meaning of equal rights, so that the rights of all can be maintained.

I am confident that the solutions can be found to many of the problems associated with discrimination that are affecting the workplace. Through open dialog and communication, the laws regarding civil rights and equality that have been enacted by Congress can be entirely upheld. Today, I hope that we can reaffirm our commitment to this belief in equality.

I look forward to hearing the testimony of our witnesses who have been generous enough to come here today. I am interested in hearing their ideas and their recommendations for solutions to many of the problems that are affecting the workplace.

And I also would like to express my thanks again to the chairman and his staff for their efforts in organizing today's very important hearing.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much.

Next, we will hear from the distinguished Congresswoman from Connecticut, Congresswoman Rosa DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman. At our last hearing on this subject we listened to poignant testimony of abusive discriminatory practices employed by many Japanese firms operating in the United States. I came to that hearing with an open mind, unwilling to prejudge the companies in question. But I left unable to ignore our witnesses' testimony.

We heard from a vice president at an advertising firm who experienced preferential treatment afforded to Japanese employees and active discrimination against Americans. When the company reduced its work force he was fired, possibly because he was an American

We heard from an administrative assistant at a securities firm who detailed the pervasive and systematic discrimination against women in her company. Two sets of criteria were employed to assess performance and promotion, with the qualifications for women inexplicably more stringent.

And most shockingly, we heard testimony from a recruiter who was directed on one project to reject out of hand applications for employment from all candidates who were not ethnically Asian. Taped above this employee's desk was a directive that said: "Foreigners are no good. White people, black people, no. But second generation Japanese or others of Asian descent, OK."

This is not the way we do business in the United States. We believe in equal opportunity without regard to gender or race or age or national origin. It appears that many Japanese firms don't believe as we do. But this is not a question of corporate belief; this is a question of law. Foreign-owned companies operating in the United States must adhere to American antidiscrimination policies. We are a Nation of laws and principles. Prime among the principles that guide us is that the rights of the minority are as sacred as the privilege of the majority. In the same way that American firms would not discriminate against Japanese employees, so too we expect that Japanese firms would not discriminate against American employees.

But witness after witness has testified that Japanese-owned firms are willfully breaking our laws. More witnesses will tell their angering stories today. They raise questions that must be answered. This discrimination will end.

I look forward to today's testimony. And let me commend you, Mr. Chairman, for holding these important hearings. Thank you.

Mr. LANTOS. Thank you very much.

It is my pleasure to call on my good friend and colleague from Connecticut, Congressman Christopher Shays.

Mr. SHAYS. Thank you, Mr. Chairman. I would like to join with you and my two colleagues, other colleagues to say that I concur with the fine statements of all three of you.

I started these hearings somewhat skeptical, a little concerned that maybe we weren't getting caught up in a process of somehow blaming someone else for some of the problems we see in our country. But I have come to feel that this problem exists. That there is widespread discrimination in many Japanese-owned companies. The solution is really what we are looking for. I think it is established that the problem exists and now it is a question of how do we deal with.

I look forward to these hearings. I also look forward to working with these Japanese companies to see how we can get them to improve.

Thank you, Mr. Chairman.

Mr. LANTOS. Before calling on the first panel, I would like to express my appreciation to members of the staff who prepared these hearings: Mrs. Joy Simonson, Ms. Lisa Phillips, and our chief of staff, Mr. Stuart Weisberg.

I would like to ask now Ms. Kimberly Carraway, senior sales assistant, Sumitomo Corp. of America; Mr. Sidney Cohen, former owner of Value Rent-A-Car of Florida; Mr. John E. Fitzgibbon, Jr., former Nomura Securities employee and author; and Prof. William H. Lash III, of St. Louis University Law School, to come to the witness table.

[Witnesses sworn.]

Mr. LANTOS. We want to thank all four of you for appearing. In some cases it takes considerable courage to testify at these hearings, since although laws protect you from discrimination and retribution of any type, in the real world this cannot always be guaranteed. So I want to commend you and express the appreciation of the subcommittee.

We will begin with you, Ms. Carraway. Your prepared statement will be entered in the record in its entirety. You may proceed any way you choose.

STATEMENT OF KIMBERLY S. CARRAWAY, SENIOR SALES ASSISTANT, SUMITOMO CORP. OF AMERICA, CHICAGO, IL

Ms. CARRAWAY. Thank you.

During my second month with Sumitomo Corp. of America, a Japanese manager told me that American women will never move into the upper ranks of business because they become too emotional once every month. From that moment on, I vowed that American women would not continue to be victims of the archaic Japanese management model. Japanese corporations operating in the United States have determined that there are two sets of rules: Those that apply to other companies, and those that apply to themselves. While our Government and society has been focusing all their energies on employment equality between the sexes, the Japanese have been able to systematically create their own set of rules. The increased interest in issues regarding only women as employment victims have allowed Japanese companies to undermine even the basic rights of American men.

To the outsider, a Japanese corporation appears to be a highly conservative, economically adept, profitable entity. While some of this image may be true, my experiences in Sumitomo Corp. of America have proven the opposite and have served as a difficult initiation into the business community. As an American, my opportunities are limited at Sumitomo. As a woman, I am banished to a separate and unequal career path.

This system of promotions is no more than a symbolic change in rank. One can perform the same job for 20 years while being "promoted" four or five times. Although it appears as if an American can rise through the ranks from a sales and customer service assistant to an account manager, closer inspection of the job descriptions reveals that all the positions are basically the same. Granted, there are some minor increases in responsibilities, but for the most part, all the basic job functions remain unchanged. I have brought with me the only five job descriptions for any American in a business section in this Japanese firm.

After 3 months at Sumitomo, I was performing most of the tasks outlined in the account manager job, which is the highest ranking for any American, but was being paid as an entry level employee. Certainly no one ever expects to join a company and soar to the top ranks, but one should be paid for the job which one performs. Basically, a young woman joins the company as an assistant and is asked to do everything from approach a potential new client to serve coffee to the Japanese visitors. There is no real delineation of responsibility.

The management of Japanese corporations do not like the fact that they must promote women and treat Americans equally. On more than one occasion, I have been informed that my promotion was strictly token and not to consider a promotion as a reward for quality work. Promotions of Americans are for the sole purpose of protecting the company from future lawsuits. I have been told this directly, and it also satisfies an agreement from a past legal confrontation they had with an American male.

Recently, Sumitomo hired a man in an effort to protect themselves from claims that they discriminated against American men. While he was given an impressive title and salary, he is performing basically the same tasks as another female in his department. She is earning half as much as he is and she has been with Sumitomo for 13 years.

The opportunities for an American male are even more limited than for those females, really, because Japanese corporations routinely contract employment agencies to fill job openings. These employment agencies are more likely to recruit women than men because they have been instructed to do so by the Japanese corporation. And also, in Japan, when a man is inferior to another male, it is due to his seniority at the company, not to an employee/boss relationship, and they have a very difficult time being another man's boss, so to speak.

My conversations with the employment agency through which I attained my present position were primarily of an instructional nature. I was told how to dress and what to say. At first, I thought this was just a helpful hint. Just out of college, wanting my first job, of course I took these suggestions and ran with that. But, in retrospect, I see that these comments were coming directly from the company in an effort to definitely define what kind of person they wanted to hire for the job, and I don't mean that qualification-wise. I mean that in their mannerisms.

In fact, maintaining the structure of Japanese over American is more important than maintaining the customer accounts. In several instances my customers have expressed an interest in dealing exclusively with me because of a great dislike for my Japanese manager. Instead of recognizing the value of keeping one of our largest customers, the relationship was allowed to deteriorate. The Japanese perceive that their "face" or honor is lost if they must turn to an American assistant to save an account.

In the United States the structure is set up so that all rotating Japanese managers are superior to even the highest-ranking American. They are kept comfortably above the rest of the employees through a system of interoffice information. All business meetings are conducted in Japanese, most informational circulars are written in Japanese, and even those that are published in English are only passed to the Japanese managers. Therefore, as Americans, we are left out of the information network. This can damage our careers as well as build up a great deal of discontent and resentment. In our society information is power, and our inability to tap into this vital company information deters us from gaining the qualifications to move into positions of greater responsibility.

A strategy that almost all Japanese firms adopt is the enhancement of managerial qualifications in order to legally bring in Japa-

nese nationals. My direct supervisor has less education than myself, has trouble understanding the complicated drawings and terminology of our industry, and must have every concept explained to him numerous times. He has admitted to me on more than one occasion that the education of the typical Japanese man in a nontechnical field is far below that of an American If this is true, and I have every reason to believe he is telling me the truth, then Americans are being cheated out of jobs where there is a large pool of qualified sales and marketing professionals available.

Japanese corporations have set up a system of bribes for the American employees in order to keep them satisfied. We have tuition reimbursement plans, on-the-job training plans, and they send you to seminars. But when it comes time to promote you to a level that matches your educational abilities and your experience in participating in these seminars, there are no positions available at Sumitomo and there are no levels of responsibility that are open to us.

Japanese corporations have brought to America more than their exclusionary employment practices. Sexual harassment is considered almost something of a joke to the Japanese Although they publish elaborate antiharassment statements, sexual material is widely accepted in the corporate setting. A stack of Playboy magazines left open on the conference table is no big deal to a bunch of Japanese managers. Neither is pornographic calendars with the Sumitomo Corp. Group logo embossed upon it. These types of materials enrage me. They are unacceptable in a corporate office. The fact that one of the Sumitomo companies would produce a pornographic calendar for distribution among the other Japanese or Sumitomo Group companies is abhorrent. To make matters worse, the calendar portrayed American women, not Japanese

And I did bring along a visual aid. On Saturday, I do go in on the weekends to do some additional work, as every good automotive industry employee knows we have to keep up with the latest in technology, well, my boss has been doing his homework. We have Playboy's Girls of Summer, 1991, and some proper business attire for those late Friday evening meetings. This was on his desk. I do not have to put up with that.

[Witness holds up pink briefs.]

Ms. CARRAWAY. Another common practice that constitutes an offense is the servicing of Japanese offices by video rental agents. He claims that his videos are only of typical television programs in Japan, but one of my bosses admitted, after I pressed him for the truth, that most of the movies were pornographic. If the rental business was conducted from their homes, there would not be a problem. But, the rental agent shows up at the office every Friday at 5 p.m. and hangs all over the desks of the American women while the Japanese managers fight for the latest selection of "Tammy Does Tokyo," or whatever is hot for these people.

During the ensuing week, the Japanese managers freely trade these videos around the office, often leaving them upon each other's desk. This is not only vile and disgusting to have in the office, but against the law in the United States of America.

Not only have I encountered these movies, calendars, and magazines in the office, but I have experienced other kinds of sexual

harassment from a Japanese manager. He has since transferred back to the Tokyo office, but while he was working in our department he regularly asked for photos of myself in a swimsuit. Please tell me what professional purpose does this serve.

While no corporate organization is perfect, there must be a limit on the kinds of behavior we will accept in the United States. Certainly the Japanese are of a different culture, but they must learn to adopt to our standard of proper corporate citizenry. In my situation, it might have been easiest to quietly exit Sumitomo, leaving the other women behind to discover for themselves the travesty of Japanese management. But my belief has always been that all people, no matter their ethnic origin, deserve the same degree of respect. American women in Japanese firms are not getting this respect.

In a sense, the United States of America has been made a fool by the Japanese. They have used our system in order to gain access to our advanced research and educational facilities. They mock our law by continually discriminating against American employees, and they prevent capable Americans from working by importing intellectually inferior Japanese employees.

The Japanese hold the belief that if one does not approve of the way they do business then one does not have to work for a Japanese company. While this may be inherently true for any organization, the fact remains that Japanese corporations do not recognize their behavior toward Americans as wrong. The time has come to look more closely at these organizations as well as our own laws that allow them to operate and to investigate ways that these discriminatory practices can be remedied. America needs corporations that do not hire an employee because of their sex or race, but hires this person because they are the best possible candidate.

I have brought with me documents, letters to the United States Government requesting additional stay in the United States for several Japanese managers, and one of the examples I brought was of my manager who just returned. And I can tell you right now from looking at the letter it is a form letter that is filled out for every single Japanese national in our company, and it would be very easy to replace him with an American because I am basically doing their job. I just do not speak Japanese. But all of our business dealings with the Japan office are handled in English. So, in my mind and in the minds of most of my coworkers, there is no possible excuse to bring in a Japanese national to fill this position. There are many qualified Americans.

Mr. LANTOS. Thank you very much, Ms. Carraway. We will have a number of questions of you. A very shocking bit of testimony.

Our next witness is Mr. Sidney Cohen, former owner of Value Rent-A-Car, Florida.

Mr. Cohen.

STATEMENT OF SIDNEY H. COHEN, FORMER OWNER, VALUE RENT-A-CAR, FLORIDA

Mr. COHEN. Mr. Chairman, and members of the subcommittee, good morning, and thank you for giving me the opportunity to

speak to you. My name is Sidney Cohen, and with me is my oldest son, Jeffrey.

We are here because we believe my family has been a victim of discrimination by Mitsubishi Motor Sales of America [MMS], which is more than 80 percent owned by the Japanese giant Mitsubishi Motor Corp. Had my family and I known of the heartbreak and hardship that lay ahead, we would never have sold our car rental company to MMSA. Within months of the sale, Mitsubishi executives made anti-Semitic remarks and orchestrated a series of events designed to embarrass and harass my family, as well as ruin the integrity of the Cohen name. By testifying, I hope to expose the discriminatory attitudes and tactics we have experienced and prevent other companies from falling into this trap.

Twenty-two years ago, I founded Value Rent-A-Car in Baltimore, MD, with a single downtown location. An additional location was opened at Washington National Airport, followed by six more locations in Florida. In 1990, Value employed 750 people with revenues of $70 million and a seasonal peak fleet of 22,000 cars.

During the past decade, most major rental car companies, including Hertz, National, and Avis, were sold to or became financially affiliated with one of the Big Three domestic car manufacturers. Like these companies, Value was exploring a sale or a close financial relationship with a major car manufacturer. In mid-1989, Value had an initial conversation with Mitsubishi Motor Sales of America to discuss a negotiated sale. We believed MMSA could be a strong financial partner as well as a manufacturer seemingly anxious to provide competitively priced cars. In May 1990, a final agreement between MMSA and Value was signed which provided for the sale of 80 percent of Value's stock and all Value real estate property to MMSA. Since MMSA insisted we remain as managers, 5-year employment contracts were signed by myself and my two sons, including a provision stipulating that 10 percent of Value's operating profit—up to a maximum of $15 million—was to be paid to us over that 5-year span.

The contract specified that I would be CEO and president with the authority to manage daily operations and report only to the board of directors. It is important that I note MMSA insisted that we agree to the 5-year payout as evidence of our good faith. In my opinion, MMSA's true intention was to have a mechanism in place to steal the company from the Cohens. Contract provisions designed to protect my family have been ignored completely and breached continually by MMSA.

MMSA assigned two Japanese executives to supposedly act in a staff advisory capacity only, Mr. Yoshida and Mr. Matsumoto, neither of whom had any experience whatsoever in the rental business. Mr. Yoshida began a campaign to remove my family, conducting offsite strategy meetings and sessions with other MMSA executives and Mitsubishi representatives.

On numerous occasions he attempted to belittle me and my family, continually asking Jeff and me why Jews were "different" from other Americans and making more pointedly anti-Semitic remarks in front of others. Yoshida has admitted in a sworn deposition that he asked where he could buy books about Jews. Numerous depositions confirm the anti-Semitism of Mr. Yoshida and

other MMSA executives. Mitsubishi's chief executive officer and other MMSA personnel referred to Value Rent-A-Car as Hemorrhoid Rent A Car, further confirmation of Japanese managers' animosity and their attempt to humiliate and intimidate us.

Yoshida continually tried to get Value to purchase Mitsubishi products and use the services of Mitsubishi and other Japanese-owned companies: Tow trucks, glass and decal companies, and Mitsubishi dealers for body work. He clearly indicated a preference to work with other Japanese companies rather than American companies.

Depositions show that by January 1991 Yoshida and an MMSA associate loyal to him, Mr. Jeff Davis, had conspired with a discharged Value employee to humiliate my family and fabricate reasons for firing us. The employee was rehired by Mitsubishi, and with the encouragement of Yoshida, worked to discredit the Cohens. For example, he installed a bugging device in the Value office and then implicated my family.

On February 6, 1991, we were asked to attend a board meeting in Chicago, supposedly to review business plans for 1991 and 1992. Instead MMSA executives read a written statement to my son and me which suspended the four Cohens from Value on the basis of false allegations, including the aforementioned bugging incident. At this meeting, MMSA claimed an independent committee would investigate these allegations. The investigating committee was not independent. Instead it consisted of current and former MMSA employees, including Mr. Jeff Davis, whose anti-Semitic bias I have already mentioned. No member of the committee ever spoke to my family or attempted to discuss our version of the events.

Following the suspension of the four Cohens, five executive officers and two secretaries were summarily dismissed and escorted off the property by armed security guards. All but one of these former employees are members of a minority. We supplied a chart demonstrating that fact. Their replacements are Japanese males and non-Jewish males.

Under the Cohens' direction, the board of directors of Value consisted of three Jewish Americans. MMSA's board now consists of three Japanese males and one non-Jewish male, all with less than a year's combined experience in the car rental business. The Value employees that were fired were seasoned, capable employees with over 25 years' experience between them. All were removed in one afternoon and given no reason at that time for their dismissal. In later depositions, the reason given for firing them was their loyalty to the Cohens. Skill and competence were never a factor and not even considered.

Mitsubishi continued to harass my family and attempted to embarrass us publicly on several occasions. For example, on February 7, 1991, we made an appointment to retrieve our personal belongings and were kept waiting outside the Value headquarter office building while employees who were ordered to leave early watched from across the street. About 5:30 three Broward County Police cars arrived and blocked the exit. Then they searched my son Steven before escorting us into the office.

We had hoped to settle the dispute amicably, and we sent a letter to Mitsubishi in Japan, also included with my testimony re-

questing a meeting. Japan's only response was to deny involvement and forward the letter to MMSA in California.

Mr. Chairman, I put my company on the market and I learned a valuable lesson about doing business with a Japanese concern. Perhaps those people unwilling to play by the rules should not be given easy access to U.S. markets.

Thank you for your attention.

Mr. LANTOS. Thank you very much, Mr. Cohen. We have a number of questions to ask you.

[The prepared statement of Mr. Cohen follows:]

TESTIMONY OF
SIDNEY H. COHEN
BEFORE THE HOUSE GOVERNMENT OPERATIONS COMMITTEE
SUBCOMMITTEE ON EMPLOYMENT AND HOUSING

SEPTEMBER 24, 1991

Mr. Chairman, members of the Subcommittee, good morning, and thank you for giving me the opportunity to speak to you. My name is Sidney Cohen, and the gentleman here with me today is my son, Jeffrey Cohen.

We are here today because we believe my family has been a victim of discrimination by Mitsubishi Motor Sales of America (MMSA), which is more than 80% owned by the Japanese giant Mitsubishi Motor Corporation. Had my family and I known of the heartbreak and hardship that lay ahead, we would never have sold our car rental company to MMSA. Within months of the sale, MMSA executives made anti-semitic comments and orchestrated a series of events designed to embarrass and harass my family, as well as ruin the integrity of the Cohen name. By testifying, I hope to expose the discriminatory attitudes and tactics we experienced, and prevent other small, minority-owned companies from falling into this trap.

Twenty-two years ago, I founded Value Rent A Car in Baltimore, Maryland, with a single downtown location. An additional location was opened at Washington National Airport, followed by 6 more locations in South Florida--Orlando, Fort Lauderdale, Miami, Tampa, and West Palm Beach. By 1978, the fleet had grown to approximately 500 cars, composed predominantly of Ford models.

In March of 1983, my sons and I purchased Greyhound Rent A Car from the Greyhound Corporation in Phoenix, Arizona. Greyhound had 25 locations, revenues of $20 million, 400 employees, and a fleet of 5000 cars, mostly General Motors products.

The Greyhound and Value operations were merged completely. All personnel became employees of the new, enlarged Value Rent A Car. Revenues in 1983 reached $25 million with a peak fleet of 6000 cars. Over the next few years, competitive pricing and attentive customer service led to substantial growth. Value was a trendsetter in the industry, the first company to offer a one-price package for car rental. Customer response to this strategy was tremendous, dramatically accelerating Value's growth. With the opening of state-of-the art facilities in Orlando, Fort Lauderdale, and Las Vegas, the foundation for substantial future growth was in place.

Orlando is the number one tourist attraction and the number one rental car market in the U.S. By 1990, Value employed 750 people with revenues of $70 million and a seasonal peak fleet of 22,000 cars.

During the past decade, most major rental car companies were sold to or became financially affiliated with a domestic car manufacturer. Ford "purchased" Hertz and Budget, GM purchased National and Avis, Chrysler "purchased" Snappy, Thrifty, Dollar, General, and Lindos.

Like these companies, Value was exploring a possible sale or a close financial relationship with a major manufacturer. In mid-1989, Value had an initial conversation with Mitsubishi Motor Sales of America (MMSA) to discuss a possible negotiated sale. We believed MMSA could be a strong financial partner as well as a manufacturer seemingly anxious to provide competitively priced cars. Negotiations between MMSA and VRAC

commenced and a letter of intent was signed in January 1990. The transaction was closed in May of 1990 and consisted of the following:

1. 80% of Value's stock would be sold to MMSA, 20% to remain with the Cohens; purchase price was to be paid to the Cohens over a five year period.

2. All property owned by the Cohens and Value was to be sold to MMSA, with payment to be made over a five-year period.

3. A licensing agreement for the Value trademark, payment to be made over a twelve-year period, was to be entered into. And finally,

4. Five-year employment contracts for myself and my sons were to be honored (MMSA insisted the Cohens remain to manage). During this 5 year period, 10% of Value's operating profit, up to a maximum of $15 million, was to be paid to the Cohens.

The contract specified that I would be CEO and President with the authority to manage daily operations and report only to the Board of Directors. It is important that I note MMSA insisted the we agree to the five-year payout as evidence of our good faith. MMSA's true intention was to have a mechanism in place to steal the company from the Cohens. Contract provisions designed to protect my family have been ignored and breached by MMSA.

In June and July of 1990, Value became aware of the aggressive pricing deals domestic manufacturers were offering to rental car companies. We made MMSA aware of these programs and asked them to honor our mutual understanding that they match GM and Ford's pricing. MMSA refused. And so, in August 1990, I negotiated a Purchase Agreement with Ford to buy 25,000 cars, including an incentive and advertising package of $25 million. During our conversations regarding the purchase of these

Fords. MMSA repeatedly asked that the contract not be fully enforced and insisted instead that Value purchase a combination of domestic cars and higher-priced Mitsubishis. However, to keep the company at its most profitable, we simply pursued the best deal. To say the least, our relationship with MMSA significantly deteriorated in the months following.

MMSA assigned two Japanese executives to act in a staff advisory capacity only, Kazuo Yoshida and (Mr.) Matsumoto--neither of whom had any experience in the rental business. Mr. Yoshida began conducting a campaign to remove my family, conducting off-site strategy sessions with other MMSA executives and Mitsubishi representatives.

On numerous occasions he attempted to belittle me and my family, continually asking Jeff and me why Jews were "different" from other Americans and making more pointedly anti-semitic remarks in front of others. Yoshida has admitted in a sworn deposition that he asked where he could buy books about Jews. Numerous depositions confirm the anti-semitism of Mr. Yoshida and another MMSA executive, Jeff Davis. An independent witness testified that Mr. Davis referred to the Cohens as "f---ing Jews" and that he felt Value was "well rid of them." Despite his clearly biased opinions, Davis was part of an "independent committee" charged with investigating MMSA's accusations made against my family after we were unilaterally suspended. MMSA's Chief Executive Officer and other MMSA personnel referred to Value as "Hemorrhoid Rent A Car", further confirmation of Japanese managers' animosity and disrespect for the company my family had built.

Yoshida continually tried to get VRAC to purchase MMSA products and use the services of MMSA and Japan-owned companies: tow trucks, glass and decal companies, and Mitsubishi dealers for body work. He clearly

indicated a preference to work with other Japanese companies rather than American companies.

During October, November, and December of 1990, MMSA breached our contract continually. The authority of the two inexperienced Japanese executives was expanded and our authority limited.

By January 1991, depositions show Yoshida and Davis conspired with a discharged Value employee, Paul Corbin, to fabricate reasons for the firing and humiliation of all four Cohens. Corbin had been fired from his job as security chief by the Cohens, and then rehired by Mitsubishi. Yoshida encouraged Corbin to install a bugging device in the Value boardroom and then blame it on the Cohens.

In an attempt to embarrass Steven Cohen, Corbin planted cocaine in Steven Cohen's briefcase, then alerted the police. Charges were dropped completely later. An independent witness has since testified that Yoshida was fully aware of these activities and encouraged Corbin to continue his campaign.

MMSA also accused my family of stealing from Value, alleging to the FBI and the Broward County Sheriff's office that the Cohens had stolen scrip from Value. Once again, events would prove Paul Corbin and MMSA were behind this scheme as well.

We were asked to attend a Board meeting in Chicago on February 6, 1991, supposedly to review business plans for 1991. Actually, the meeting proved to be held in order to read a written statement to my sons and I which suspended us from Value on the basis of false allegations of bugging, cocaine possession, and diversion of company funds.

At this meeting, MMSA claimed an independent committee would investigate these allegations. The investigating committee was *not*

independent, instead consisting of current and former MMSA employees, including Jeff Davis, whose anti-semitic bias I have already discussed. No member of the committee spoke to my family nor attempted to discuss our version of the events.

In Florida, Jeff Davis physically implemented the suspension. An army of armed guards from Wackenhut Security and MMSA simultaneously swooped down on all 24 Value locations. These armed guards stationed themselves at every door and demanded that location safes be opened. The rumor was spread that guns, drugs, and unaccounted for cash was to be found. The search turned up nothing.

Following the suspension of the four Cohens, five executive officers and two secretaries were summarily dismissed and escorted off the property by armed security guards. All but one of these former employees are members of a minority:

5 Jewish Americans

1 Hispanic

3 females

1 handicapped American

1 non-Jewish white American

Their replacements are Japanese males and non-Jewish males. Under the Cohens, the Board of Directors consisted of three Jewish Americans. MMSA's Board now consists of three Japanese males and one non-Jewish male with less than a year's combined experience in the car rental business. These people were experienced, capable employees with over 25 years experience between them. All were removed in one afternoon and given no reason for their dismissal. In recent depositions, the reason given for firing

them was their "loyalty to the Cohens." Skill and competence were not even a factor.

MMSA continued to harass my family and attempted to embarrass us publicly on several occasions. For example, on February 7, 1991, we made an appointment for 5 PM to pick up our personal belongings at Value's headquarters. We were kept waiting outside the building, while employees who were ordered to leave early watched from across the street. At 5:15 PM, three Broward County patrol cars arrived, blocked the exit and then approached us. Steven was searched before we were escorted into the office under the supervision of police and armed security guards.

We filed a lawsuit in February 1991 in order to clarify our position and bring this situation to a resolution. A request for a settlement meeting was made to MMSA, but received no response. Included in the Exhibits is a letter we sent to MMSA Japan requesting a meeting. Japan's only response was to deny involvement and forward the letter to MMSA California.

Mr. Chairman, I put my company on the market and learned a valuable, if painful, lesson. Perhaps those unwilling to play by the rules should not be given easy access to our markets. Thank you for your attention.

APPENDIX TO TESTIMONY OF SIDNEY H. COHEN

Exhibit A	Demographic comparison of Value Rent-a-car's top management under Cohens and MMSA
Exhibit B	Sidney Cohen's letter to Masanao Ueda, Executive Vice President, International Business, Mitsubishi Motors Corporation
Exhibit C	Mitsubishi's reply to letter in Exhibit B Written by K. Ikuin, General Manager, North America Department
Exhibit D	Sidney Cohen's reply to Ikutn
Exhibit E	Mr. Ikutn's reply to letter in Exhibit D

Value Rent-a-Car Discrimination Case

Replacement of Top Management

Mgt. Level	Title/Duties	Under Cohens	Years Exper.	Under Mitsubishi	Exper.
I	Board of Dirs.	3 Jewish-Amer.	10, 15, 22	3 Japanese 1 Non-Jewish Amer.	<1 0
II	President	Jewish -Amer.	20	Japanese	<1
III	Sr. Vice Pres., Operations	Jewish-Amer.	15	Japanese	<1
	Sr. Vice Pres., Finance	Jewish-Amer.	10	Non-Jewish Amer.	0
	Vice President, Mktng./Sales	Jewish-Amer. Female	5	Non-Jewish-Amer. Male	?
IV	Asst. Vice Pres.	1 Hispanic 1 Handicapped 1 Other	5 5 6	3 White Amer.	varying
V	"Class 1" Site Mgrs. (3 of 6 replaced)	12 Hispanic 7 Jewish-Amer. 8 White Amer.	varying	3 White Amer.	varying

NOTE: All of above are male except as otherwise noted.

Exhibit B

SIDNEY H. COHEN
3140 South Ocean Boulevard
Apt. 505S
Palm Beach, Florida 33480 USA

June 6, 1991

Mr. Masanao Ueda
Executive Vice President
International Business
Mitsubishi Motors Corporation
33-8 Shiba 5-Chome,
Minato-Ku
Tokyo 108 JAPAN

Dear Mr. Ueda:

You and I have been together on several occasions and you impressed me as an honorable and reasonable man. My family and I have dealt with you honorably during all of the negotiations leading up to the purchase of Value Rent-A-Car as well as when I served as an officer and director of Value.

I am directing this letter to you because I am deeply concerned about the unfair and unethical way my family and I have been treated by Mitsubishi Motor Sales of America.

There has been considerable adverse publicity in local, national and international newspapers which have depicted Value and Mitsubishi in a most unfavorable light. I have enclosed some of these articles. It is inevitable that the continuing bad faith by MMSA will be made public in the court room in Broward County and also will be given worldwide coverage by the news media since this is the first time that a Japanese car manufacturer has purchased a rental car agency in the United States.

This letter may be somewhat longer than both of us would like it to be, but I feel that you must hear our side of the story and realize what is going on in the litigation. Our Amended Complaint is enclosed for your convenience.

Contrary to what you may have been told, my children, Jeffrey, Steven and Wendy and I are responsible and honorable people. We have had charges and allegations of bad faith and wrongdoing leveled against us which are without merit and without any evidence. In reality it was the representatives of MMSA, as well as some of the current employees of Value, that have engaged in wrongdoing. Some of those acts of wrongdoing are as follows:

In the negotiations with MMSA, it was a requirement of the Letter of Intent that if MMSA was not satisfied with our appraisals

for the real estate, MMSA would have the right to select an INDEPENDENT appraiser to reappraise the real property. We have since learned that the company chosen by MMSA was Cushman-Wakefield, a company that we now find is owned and controlled by Mitsubishi. That was not dealing honorably or in good faith.

Despite the fact that we were assured by Richard Recchia and John Zorger that Mitsubishi did not have a hidden agenda, I later received a letter from Richard Recchia that reflected a different attitude and to quote him, he states that "the Japanese do not lay all their cards on the table and that they work under their own timetable." I have enclosed a copy of that letter for your reference.

We have been accused of bugging or electronically eavesdropping the offices of Value. This is not true. It has come to our attention that the bugging was actually done by and under the direction of Paul Corbin who was a former head of security of Value. He was trying to impress the people at MMSA. Corbin set up the bugging with the full knowledge of Yoshida, Davis and Recchia. My family and I knew nothing of the bugging.

It is important that you know a little more about Paul Corbin before we go on to the other acts of bad faith and impropriety of MMSA and those facts are as follows:

(a) Corbin stopped performing effectively for Value and he was discharged during the time when my sons and I were operating the company.

(b) After he had been discharged, he was rehired by representatives of MMSA and Jeff Davis and Yoshida and in fact led a "raid" and a "firing spree" at some of the Value locations during the time when he had been rehired without the consent of my sons or me.

(c) Many of the upper management people that were fired were long-term employees of Value. They were hardworking and dedicated people, most of whom had families that depended upon their salary for support. They were terminated by physically large security guards employed by MMSA while armed guards from Wackenhut stood by with their weapons very visible and blocked the exits of the building.

(d) This is the same Paul Corbin, the head of Value security, who two independent witnesses have stated had in his desk on the property of Value approximately 20 OUNCES of cocaine. This fact was known to Jeff Davis and to Yoshida and they took no steps to terminate him for almost a month following the time that they had learned about it.

My sons and I were accused of stealing <u>scrip</u> from Value. It has become apparent that the theft of approximately $150,000.00 in scrip was engaged in, <u>not by the Cohens</u> but by Paul Corbin, the

individual who Davis and Yoshida decided to rehire and who Yoshida has referred to in his deposition as an "honorable man." Corbin and his girlfriend were caught trying to sell scrip by the F.B.I. and the Broward County Sheriff's office.

Another independent witness has informed us that almost $1 million in scrip was stolen from the property of Value after my family and I were wrongfully discharged and barred from being allowed on Value property. This is during the time Value was spending $100,000.00 a day on security. We have heard that Corbin has confessed to the taking of this additional large sum of scrip. He did this when he was still the head of Value security, a position that he had because Davis and Yoshida rehired him back after he was discharged by my family while we were at Value.

My family and I were also accused of stealing cars from Value. It has been proven, at a hearing before the Judge, that the cars we were accused of taking were out on contract with other people and one was in a repair shop in Miami since it was damaged while out on contract. I believe that this is another example of Davis and Yoshida trying to justify their firing of me and my family and further trying to embarrass us in the public eye as well as with the employees of Value. Obviously, it is easier and less embarrassing for them to blame others rather than accept responsibility for their own mistakes.

Possibly you have been told that another reason my son Steven was terminated was due to the fact that when he was stopped in his car by local police officers, he was found to have .3 GRAMS of cocaine (less than the size of an aspirin) in his briefcase. You should know that those charges were dropped without a trial and that my son has always taken the position that someone planted that cocaine in his briefcase and that it was not his. My son is an athlete, very health conscious and is offended by any illegal drug use.

It is discomforting that Mr. Yoshida failed to immediately discharge Paul Corbin from head of security of Value when two witnesses confirmed Corbin's cocaine possession of approximately 20 oz. which is substantially more than my son, Steven, was ever even accused of possessing. For his small amount that wasn't even his, Steven was promptly terminated by Value while Paul Corbin was allowed to continue his employment and ultimately permitted to resign rather than be fired. Why are Davis and Yoshida being so nice to Corbin? Why haven't they moved to have him arrested for selling and stealing the scrip?

Value and MMSA attempted to say that the Cohens were merely SUSPENDED on February 6 rather than TERMINATED, but in reality it was quite clear that when a supposedly INDEPENDENT INVESTIGATING COMMITTEE was appointed, having on it Jeff Davis, a former employee of MMSA, Ellen Gleberman, a current employee of MMSA and Dan

MacNamara, a current employee of MMSA, it was not going to be very independant or objective since no doubt a decision had already been made that the Cohens had to go! We were never given an opportunity to speak with the investigating committee although they say they did a thorough investigation. In fact, the only option we were ever given was to resign rather than be suspended. Suspending the Cohens was a clear breach of our Employment Agreement.

I am concerned and I believe justified that the termination of my family was really based upon two reasons:

(a) The Cohens are Jewish and MMSA was going to carry out a program of anti-semitism. This will be proven at trial.

(b) The Cohens decided to purchase American made Ford Motor Company cars for a price considerably less than comparable cars could have been obtained from Mitsubishi. That fact angered and embarrassed Mitsubishi.

We understand that Mitsubishi and all Mitsubishi related corporations were very disappointed at the decision to purchase Ford automobiles. Please be assured that no one was more disappointed than the Cohen family. One of our primary reasons for selling Value Rent-A-Car to Mitsubishi was that Mitsubishi promised us we would be able to purchase their cars at competitive prices. When this was not offered, we had no choice but to do what was in the best interest of the company and purchase Ford vehicles. We believe that all of the trumped up litigation we are now involved in stems from this decision.

The Cohens saved the company more than $25 million by buying the Ford cars and by doing so, we carried out our corporate obligation by doing what was best for Value. We would have been quite happy to buy or lease cars from Mitsubishi if the price had been as competitive as Mitsubishi is now leasing cars to Value since the discharge of my family and me. This may be a violation of the U.S. "Robinson-Patman" Law. My attorneys are aggressively investigating that possibility.

Mr. Yoshida has admitted in his deposition that he asked where he could buy a book on Jews so that he could learn more about them since as he said, they are different than the rest of the Americans he had met. An independent witness will testify that Jeff Davis referred to the Cohens as "fucking Jews" and that he felt that Value was "well to be rid of them." Additionally another independent witness will testify that similar remarks were also made by Yoshida. I have enclosed an article that appeared in the New York Times that talks about anti-semitism in Japan so it is not just my imagination.

I was promised by Mitsubishi that there would never be more than two Mitsubishi people employed by Value while I was there as

President and they would only be staff persons. This was another promise that was broken by MMSA.

Yoshida admitted in his deposition that many capable and dedicated upper management employees were fired and the main reason was because they were friendly and loyal to the Cohens. That is not a "justification" for ending a man's career merely because he was loyal to the head of the company he worked for. I have been informed that the Japanese place a high value on loyalty and I am amazed that you would permit someone to be fired for merely being loyal to the leadership of the company.

If MMSA really was dealing in good faith, they would have complied with the Employment Agreement and given the Cohens written notice of any alleged wrongdoings or improprieties and therefore given us the 30 day opportunity to "cure" any alleged acts of wrongdoing so that our employment could be preserved. That written notice was never given and that time to cure was never given. Failure to give notice and time to cure is in clear violation of the above-mentioned Agreement.

Even though we feel we were deceived by MMSA's failure to use an independent appraiser, we were still willing to be bound by the Contracts of Purchase and therefore had the reasonable expectation of receiving timely payments for the real property and for the payments due under the Licensing Agreement. As evidence of further bad faith by MMSA and the lack of respect for our written Agreement, MMSA has attempted to set off items that are not appropriate for set-off depriving us of money that we were supposed to promptly receive. This clearly shows me and in time, the world will know that Mitsubishi (unless you will help us) is not worthy of trust and I am certain that the Swedish government will feel a sense of concern with the possibility of them doing business with the Japanese and particularly, Mitsubishi when they see how little regard Mitsubishi has for abiding by legal promises and contractual obligations.

I have enclosed a copy of a Complaint that was filed in a law suit by my daughter, Wendy, also in Broward County. As you will see, she was scared to death by the presence of numerous physically large Mitsubishi guards along with armed Wackenhut guards. Even today, she still is seeing a psychiatrist because of the fright that she suffered and continues to suffer. If it was your daughter who was treated that way, I am certain you would be angry as well. My daughter is an honorable girl and she was treated like a common criminal in a raid and a firing spree led by the likes of Paul Corbin, a man who was known to have substantial amounts of cocaine in his desk drawer at Value and who has admitted to stealing scrip from Value. Paul Corbin also engaged in the "bugging" to impress

the Mitsubishi superiors. He is the same Paul Corbin who Yoshida and Davis decided to rehire after he had been appropriately terminated by my family while we were running Value.

The adverse publicity will be limitless and I am certain that all will benefit by reaching a practical resolution of this unpleasant dispute.

Obviously there can be no harmony where there is no trust. As I indicated, I have enclosed a letter from Recchia where he attempts to explain how he believes the Japanese people function. This letter indicates that the Japanese "do not lay all their cards on the table." In our initial negotiations and dealings, we felt that what Recchia said in his letter was not true and that the Japanese were in fact honorable. It is for that reason that I direct this letter to you as we continue to hope that with your help we can all sit down as honorable, honest and decent people in an effort to try to resolve this raging dispute outside of a court room and outside of a media that seems very anxious to make well-known and highly publicize any wrongdoing by the Japanese and a Japanese company. Enclosed is an article that appeared in Fortune Magazine recently and I am sure that it will be the first of many of the type that Mitsubishi can expect as our case goes on to a public jury trial.

I have enclosed samples of articles for your review from such publications as the Wall Street Journal, Barron's, Los Angeles Times, Automotive News and some local newspapers in the State of Florida as well.

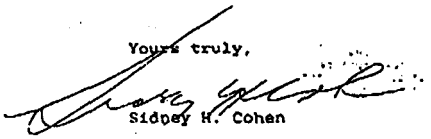
My family and I have been wronged by a multi-billion dollar company. The feelings of the people of the United States towards the way Japanese companies take over American companies and then fire the upper management of these companies are already focused on that issue as was evidenced by a recent article in the New York Times.

Justice and truth are on our side. Ask your people to show you the evidence of the Cohens' wrongdoings. You will find they have none. With reference to financial misrepresentation which is something we have continually been accused of, all of our financial records were fully disclosed and made available to Mitsubishi prior to the sale.

We think it would be in your best interest to sit down with us now and let us show you how all of the claims including those of financial misrepresentations and fraud are totally without merit. If you are desirous of talking about settling this matter, please contact me. If this matter proceeds much further, we will then want this matter to be decided by a jury.

I feel we both will benefit by bringing this matter to an amicable conclusion. You may call me at my home number at 407/533-0225 to arrange for a mutually convenient time and date to meet. Please call.

Yours truly,



Sidney H. Cohen

Enclosures

cc(w/enc): Keiichiro Fujimoto
Hiro Kazu Nakamura
Shimoku Morohashi

09/23/91 10:28 [illegible] JEFFERSON GROUP

Exhibit C

MITSUBISHI MOTORS CORPORATION

POST OFFICE:
BOX NO. 17, TAKANAWA
TOKYO, JAPAN
INTERNATIONAL TELEX:
MMCHQ J26638

33-8, SHIBA 5-CHOME, MINATO-KU
TOKYO, JAPAN

TELEPHONE:
TOKYO 3456-1111(GUIDE)
(DIRECT)
FAX:
TOKYO

June 20, 1991

Mr. Sidney H. Cohen
3140 South Ocean Boulevard
Apt. 5055
Palm Beach, Florida 33480
U. S. A.

Dear Mr. Cohen:

We are in receipt of your letter dated June 6, 1991 to Mr. Ueda regarding the current lawsuit that is pending between your family, Value Rent-A-Car and Mitsubishi Motor Sales of America, Inc. ("MMSA"). Mr. Ueda has requested that I respond to you on his behalf.

The matters that you refer to in your letter do not involve or relate to Mitsubishi Motors Corporation ("MMC"). Consequently, I have forwarded your letter to MMSA.

Sincerely,

MITSUBISHI MOTORS CORPORATION

K. Ikuta - General Manager
North America Department
Office of International Business

CC: Mr. Kazue Naganuma
President
Mitsubishi Motor Sales of America, Inc.
6400 KATELLA AVENUE
CYPRESS, CALIFORNIA 90630 - 0064
U. S. A.

3140 South Ocean Boulevard
Apt. 5055
Palm Beach, Florida 33480
U.S.A.

July 26, 1991

Mr. K. Ikuta
General Manager
North America Department
Office of International Business
Mitsubishi Motors Corporation
33-8, Shiba 5-Chome, Minato-Ku
Tokyo, JAPAN

Dear Mr. Ikuta:

Thank you for your letter of June 20, 1991.

Since MMC is an 83.3% stockholder of MMSA, I am taking the liberty of keeping you informed of recent developments.

The Court has awarded the Cohens a partial summary judgment as it relates to improper set-offs by MMSA (relating to Scrip). A copy of the Judgment Order is enclosed.

From my point of view, this means MMSA has acted unreasonably in bad faith without any justification for the unfair and irresponsible action.

Summary Judgments are only granted if the facts are so one sided and without any basis for argument.

This confirms our previous allegation to you that MMSA has wronged us.

This Order is public information. At the appropriate time in the trial, the full explanation and gravity of this Order will be extremely persuasive and convincing to the jury.

Along with other testimony, the jury will easily be able to decide who is acting in bad faith and repeatedly breaking the contract, and who is the damaged party.

Very truly yours,

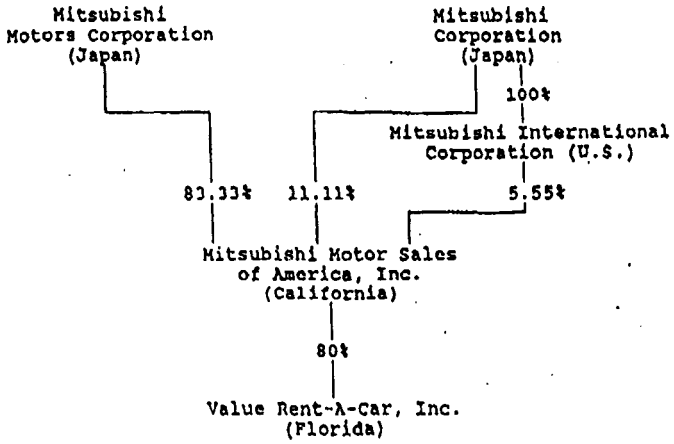
Sidney H. Cohen

Enclosure

ANNEX I

Supplemental Answers to Form BE-607

Item 2. Foreign parents holding indirect interest in U.S. affiliate:



Item 4. Industry classification of additional foreign parent (Mitsubishi Corporation): 12

Exhibit E

MITSUBISHI MOTORS CORPORATION

POST OFFICE:
BOX NO. 17, TAKANAWA
TOKYO, JAPAN
INTERNATIONAL TELEX:
MMCHO J26639

33-8, SHIBA 5-CHOME, MINATO-KU
TOKYO, JAPAN

TELEPHONE
TOKYO 3456 1111(GUIDE ONLY)
(DIRECT)
FAX:
TOKYO

August 5, 1991

Mr. Sidney H. Cohen
3140 South Ocean Boulevard
Apt. 5055
Palm Beach, Florida 33480
U. S. A.

Dear Mr. Cohen:

I am writing in response to your letter dated July 26, 1991.

As I have previously advised you, MMSA is handling the Value Rent-A-Car litigation. Please direct any further correspondence or inquiries to MMSA or its counsel.

Sincerely,

MITSUBISHI MOTORS CORPORATION

K. Ikuta - General Manager
North America Department
Office of International Business

CC: Mr. Kazuo Naganuma
President
Mitsubishi Motor Sales of America, Inc.
6400 KATELLA AVENUE
CYPRESS, CALIFORNIA 90630 - 0064
U. S. A.

Mr. LANTOS. Next witness is Mr. John E. Fitzgibbon, Jr., former Nomura Securities employee and author.

We are pleased to have you, Mr. Fitzgibbon.

STATEMENT OF JOHN E. FITZGIBBON, JR., FORMER EMPLOYEE, NOMURA SECURITIES INTERNATIONAL, INC.

Mr. FITZGIBBON. Thank you very much. I issued a prepared statement and I would just rather hit the highlights, if you don't mind.

Mr. LANTOS. Go right ahead.

Mr. FITZGIBBON. Thank you. One thing that was brought up today—I happen to be in a rather unique position. I worked for two Japanese companies, so I do have a basis of comparison between the two. I was with Nomura Securities in 1973, so I—from 1973 to 1977; Sanyo Securities from 1978 to 1990. During that period of time I was a corporate officer in both companies, which is a period of almost 18 years, which I believe makes me the longest served American officer with Japanese-owned securities companies.

For a period of 2 years at Nomura I was personal management, American staff. And during that time period, not only there but elsewhere, for nearly two decades, yes, I have witnessed a double employment standard for Japanese versus non-Japanese. And the Japanese do have a stable employment situation. It also includes other items as higher pay for equal works provided with pensions.

Japanese were included in the discussions on management meetings, discussions and decisions; Americans aren't. Japanese are given company perks; Americans don't see those. They are also promoted into meaningful management positions. Nor are the Japanese, you know, dismissed from the company or harassed into resigning.

In addition, I've witnessed discrimination against blacks, against Americans and against older employees. The very first order given me as personnel manager of Nomura Securities International, "Don't hire blacks."

In your letter you asked me to discuss three topics: One, my experiences in the securities industry; the second was with the Equal Employment Opportunities Commission; and third, recommendations.

On the Equal Employment Opportunities Commission, I have had experiences with that myself and I've spoken to others. The bottom line is from what I can gather they really aren't doing the job. They don't investigate the complaints, and after an inordinate long period of time it's generally turned back with no cause. That hobbles an American if they wish to pursue it because the Japanese can rightfully say in court the EEOC investigated and they could find no probable cause. You know, that's a tough uphill battle to fight.

Now, thirdly, you asked for recommendations and I have three. The first seems to be in tune with your thinking. Enforce the law. It's rather simple. Secondly, abolish the EEOC, it isn't doing its job, and reassign those duties to the Department of Labor. And third, I think what this committee is starting really to bring forth, there is a need for this. Establish a Subcommittee on Oversight and Investigation for Japanese American Affairs. That would be all inclusive.

We have an employment situation here. We have trade problems as we all know. Treasury Department has a problem in opening up the security markets in Japan. Industry certainly has a lot of squawks. Everybody is dancing to their own tune but it's not coordinated. All I can think of is that great flag from the American revolution, snake chopped up. You know, united we stand, divided we fall, and we all seem to be tumbling down.

Thank you.

Mr. LANTOS. Thank you very much, Mr. Fitzgibbon.

[The prepared statement of Mr. Fitzgibbon follows:]

STATEMENT

JOHN E. FITZGIBBON, JR.

EMPLOYMENT AND HOUSING SUBCOMMITTEE

SEPTEMBER 24, 1991

I, John E. Fitzgibbon, Jr., was employed by two Japanese securities firms on Wall Street from May 1973 to October 1990, nearly 18 years. I was elected an assistant vice president when I joined Nomura Securities International Inc., promoted to vice president in 1975 and dismissed effective December 1977. I joined Sanyo Securities America Inc. as a vice president in January 1978, promoted to senior vice president in 1981 and dismissed in October 1990. To the best of my knowledge, I served as a corporate officer with Japanese owned securities firms longer than any other American.

For nearly two-years, from November 1975 to September 1977, I was personnel manager for Nomura Securities International, Inc., the wholly owned affiliate of The Nomura Securities Co., Ltd. During nearly two decades of working for Japanese securities firms I witnessed a double employment standard between Japanese and non-Japanese employees. As example, the Japanese received much greater employee benefits than the non-Japanese. This included such items as stable employment (ie: life-time employment); higher pay for equal work; provided with pensions; the Japanese were included in management meetings, discussions and decisions, non-Japanese were excluded; given company perks denied to the American

staff; promoted into meaningful management positions and the Japanese were never dismissed from the company nor harassed into resigning. In addition, I witnessed discrimination against blacks, women and older employees. The very first order given me as personnel manager at Nomura Securities International was do not hire blacks.

I have observed the activities of the Equal Opportunity Commission (EEOC) from a distance and from up close. Sad to report and from my own obsevartions, the EEOC isn't doing its job. It will sit on a complaint for an excessively long time. When given documented evidence of discrimination and names of potential witnesses, the EEOC does not properly and fully investigate the evidence. The EEOC seems to looks the other way. As a result, the EEOC never follows through in completing the investigation of the complaints I have witnessed. In the end, the cases have been turned back to the charging party because the EEOC could find "no cause". Of course the lengthy delays and rulings plays into the hands of the Japanese employer. The American is forced to wait a long time to seek justice and recourse, in addition to running up unnecessary legal fees. When going to court the Japanese can rightfully claim, "The EEOC could find no evidence of discrimination." This makes it a tough, uphill battle for any American victimized by discrimination. Great harm is being done, very great harm, while the EEOC fails to protect the civil rights of U.S. citizens.

Some time ago, I was forced to file a complaint with the EEOC. In time, it could find "no cause", but notified me I had the right of appeal. I followed through and other than the return of the green, certified mail card, I received no acknovledgment. After a delay of almost two months, I wrote my congressman for help. Shortly after the congressman contacted the EEOC, I received an acknowledge of the receipt of my appeal. Why must I take such drastic a step? And this leads to my next question. Must every American citizen who has been victimized by his or hers Japanese employer appeal to their congressman before the EEOC takes action? I fail to understand hov the EEOC operates, if in fact it does operate at all.

Congressman Lantos's letter asked for recommendations for measures to combat employment discrimination by the Japanese in the United States. My recommendations are:

(1) Enforce the existing laws.
(2) I recommended the Equal Employment Opportunity Commission to be disbanded and its duties and responsibilities tranferred to the Department of Labor.

Under the theory of "If something aint broke, don't fix it; if something is broken, fix it; if it can't be fixed, replace it", it is my observations and experiences the EEOC is not doing its job and should be abolished. In the meantime, much harm is being done and the EEOC, listed in "The World Almanac" as an independent agency of the US Government, seems to be answerable to nobody, other than to itself.

(3) Create a Congressional subcommittee of oversight and investigation for American-Japanese affairs.

This oversight and investigation subcommittee would be all inclusive covering many topic items - employment discrimination, trade, banking, finance, industry, et al.

Sincerely yours,

John E. Fitzgibbon, Jr.

Mr. LANTOS. The final witness is Prof. William H. Lash III, of St. Louis University Law School.

We are pleased to have you, Mr. Lash. Your prepared statement will be entered in the record in its entirety. You may proceed any way you choose.

STATEMENT OF WILLIAM H. LASH III, PROFESSOR, ST. LOUIS UNIVERSITY LAW SCHOOL

Mr. LASH. Mr. Chairman, members of the subcommittee, I share your appreciation of foreign direct investment in this country. Unfortunately, as detailed in my article and my submission, racism and sexism are being imported along with capital and technology.

Due to the length of my written submission, I will try to hit the high points in my oral testimony.

Two studies, one by the University of Michigan, have pointed out that Japanese companies are basing plantsite selection on factors other than production costs. There is a pattern of avoidance of population areas containing large black population centers.

Japanese firms have also frequently been the targets of employment discrimination actions, as you have heard from other witnesses. Auto giants Honda and Nissan have been investigated by the EEOC for racial, sex, and age discrimination, and have paid over $6 million in total settlements. Other Japanese firms facing lawsuits or investigations alleging race or national origin discrimination include Hitachi, Recruit, Fujitsu, Dai-Ichi Kangyo Bank, Matsushita, and Nintendo.

Japanese discrimination against American women is equally widespread. We have heard quite eloquently from a Sumitomo employee of her problems with the company. This has been going back since the 1970's. Sumitomo had a discriminatory practice of hiring only Japanese males to fill managerial and executive positions. When challenged to defend this discrimination, Sumitomo banded together with the Japanese External Trade Organization and took this case to the United States Supreme Court, alleging that under the Japanese-United States Friendship, Commerce, Navigation Treaty they were entitled to discriminate in their hiring practices. Fortunately, the U.S. Supreme Court found otherwise and determined that as a U.S. corporation the New York-based Sumitomo branch was not shielded from title VII.

Despite the lawsuit, Sumitomo spent another 5 years in settling it, and under an agreement had 3 more years to implement its plan. Despite the lessons of Sumitomo, Japanese firms in the United States continue to discriminate against American women. Women employees at C. Itoh Corp. described a pattern of sex discrimination and unfair promotional practices that have been complained of since the 1970's. Similarly, women employees at Mitsubishi Bank Ltd. assert that the bank denies them promotion opportunities. Women plaintiffs in this case report being informed that "promotional opportunities and advancements were reserved for Japanese personnel." The plaintiffs also complained that the work environment was infected with frequent racial remarks asserting the lack of ability, loyalty, and commitment of non-Japanese personnel. The Court determined that the bank has an implicit policy

of reserving all high level positions in the New York office and most management positions for Japanese personnel.

Similar allegations of sex and race discrimination were recently raised in an action against Nikko Securities, which is accused of maintaining a companywide atmosphere of discrimination based on sex, race, and national origin.

It would be misleading to believe these are concerns only of women and minorities. In a blatant case of discrimination Japan-based Ricoh Corp. dismissed a group of American midlevel managers and workers at a San Jose, CA plant as part of a reduction in force. However, during this reduction no Japanese managers or employees were laid off. EEOC investigators have determined the California Ricoh facility was "tainted with national origin bias and that less qualified Japanese employees had been retained or promoted."

The United States now finds itself with the quandary of welcoming foreign investment even though this investment is inconsistent with our national policies and goals of equality and nondiscrimination. Congress should enact new legislation conditioning future foreign direct investment by multinational corporations on their provision of employment, training, promotion and investment opportunities to Americans of all races, sexes and creeds. Legislation such as this is neither unduly radical nor burdensome. It is patterned on the Investment Canada Act of 1985 under which investment into Canada is evaluated as to will this investment be consistent with Canadian policies.

Interesting enough, a report by the Japanese Fair Trade Council on trade barriers in the United States, Canada, and the EC concluded that the Investment Canada review was not posing a restriction or burden on Japanese investment. Enactment of similar legislation in the United States will allow our country to continue to welcome foreign direct investment while requiring that this investment be consistent with domestic and international policies. Furthermore, consideration of the participation of Americans in the new venture would support equal opportunity for all in foreign direct investment.

An open investment policy is an essential component of an integrated and global economy. Under the correct circumstances, foreign direct investment presents a tremendous opportunity for the host States and the investor alike. The proposed legislation will unify our twin aspirations of equality with our commitment to open investment.

I would be pleased to answer any questions the committee might have.

Mr. LANTOS. Thank you very much.

[The prepared statement of Mr. Lash follows:]

STATEMENT OF PROFESSOR WILLIAM LASH, III.

BEFORE THE

HOUSE OF REPRESENTATIVES
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

SEPTEMBER 24, 1991

Mr. Chairman, members of the subcommittee. Thank you for allowing me to address you today on this vital issue. Let me state initially my belief in a fair and open investment policy. Foreign direct investment has been welcomed in this country since its inception. Unfortunately, as detailed in my article[1], racism and sexism are being imported along with capital and technology.

A study of Japanese auto plants in the U.S. reveals that Japanese firms build plants away from areas of substantial Black populations[2]. Cole & Deskins identify "a consistent pattern" of Japanese plants being constructed at least 30 miles from the nearest Black population center.[3] Similar hiring discrepancies have been evidenced at the Nissan plant in Smyrna, Tennessee and the Mazda facility in Flat Rock, Michigan.

Japanese firms have frequently been the targets of employment discrimination actions. Honda paid approximately $6 million in a 1988 settlement of an EEOC investigation of racial and sexual discrimination from 1983-1986 at the Marysville, Ohio facility.[4] Honda also paid a settlement of $460,000 in 1987 in back pay to 85 people in connection with an EEOC investigation of age-discrimination[5].

Similarly, Nissan paid $600,000 to settle an EEOC investigation in 1989. The 92 individuals (women, Blacks, Hispanics and people over 40 years of age) alleged that they had been denied employment, terminated or denied promotion on the basis of their race, sex or age.[6]

Japan-based Recruit operates two employment agencies in the

U.S., Recruit USA and Interplace/Transworld Recruit.[7] According to the EEOC, Recruit is engaging in a "shocking pattern of race, sex, national origin and age discrimination." [8] The Recruit operation utilizes code words to designate the preferred race of a job candidate. On March 25, 1991, the EEOC filed suit against Recruit for sex, race, national origin and age discrimination.[9]

Similarly, Hitachi Consumer Products of America was charged by the California Fair Employment & Housing Department with race discrimination in hiring. California investigators found a Hitachi work force that was 50% Asian and 25% Black in Compton, California, an area where 75% of the residents are Black and only 1.7% are Asian.[10]

Other Japanese firms facing lawsuits alleging race, or national origin discrimination include Fujitsu Systems of America, Dai-Ichi Kangyo Bank, and Matsushita-Quasar.[11] Even video-game giant Nintendo finds itself the defendant of race discrimination charges by 26 Black Americans in Seattle, Washington.[12]

Japanese discrimination against American women is equally widespread. Sumitomo and the Japanese External Trade Organization defended their perceived "right" to discriminate against American women all the way to the Supreme Court in the landmark case Avagliano v. Sumitomo.[13] In Avagliano, a class of 13 American women sued Sumitomo Shoji America, Inc. asserting that "Sumitomo's alleged practice of hiring only male Japanese citizens to fill executive, managerial, and sales positions violated both 42 U.S.C. Section 1981 and Title VII of the Civil Rights Act of 1964."[14] In

defense of its discriminatory practices, Sumitomo relied on the Friendship, Commerce and Navigation Treaty with the U.S.[15] Sumitomo asserted that under the treaty "companies of either party shall be permitted to engage, within the territories of the other party, accountants and other technical experts, executive personnel, attorneys, agents, and other specialists of their choice."[16] The United States Supreme Court determined that Sumitomo, as a U.S. corporation "constituted under the applicable laws and regulations" of New York was not shielded by the treaty from Title VII[17].

After the decision Sumitomo took another five years in settling the lawsuit.[18] The agreement gave Sumitomo three years to implement the plan.[19]

Despite the lessons of Sumitomo, many Japanese firms in the U.S. continue to discriminate against women. Women employees at C. Itoh asserted a pattern of sex discrimination and unfair promotion practices that have been complained of since the 1970's. [20] [21]

Similarly women employees at Mitsubishi Bank Ltd, assert that the bank denies them promotion opportunities and relegates trained women analysts to working as administrative assistants.[22] Women plaintiffs in the Mitsubishi Bank case report being informed that "promotional opportunities and advancements were reserved for Japanese personnel."[23] The plaintiffs also complain that "the work environment, being totally controlled by Japanese managers, was infected with frequent racial remarks asserting the lack of ability, loyalty and commitment of non-Japanese personnel."[24]

Mitsubishi Bank officials defend the promotion practices and assert that familiarity with Japanese language, business culture, and management style are all essential for promotion.[25] The court held that the women plaintiffs "established a prima facie pattern of discrimination based on distinctions between the local and rotating staff."[26] The court also determined that..."[p]laintiffs have also made a prima facie case that the Bank has an implicit policy of reserving all high level positions in the New York office and most management positions for Japanese employees."[2728]

Recently, similar allegations of sex and race discrimination were raised in an action against Nikko Securities.[29] Plaintiffs assert that only Japanese males receive promotion to officer or upper echelon status and that women are restricted to working in administrative assistant positions.[30] Nikko is also accused of "maintaining a company-wide atmosphere of discrimination based on sex, race and national origin."[31]

Discriminatory practices are not reserved for women and minorities. In a blatant act of discrimination, Japan-based Ricoh dismissed a group of American midlevel managers and workers at a San Jose, California plant as part of a reduction of force. However, despite this reduction, no Japanese managers or employees were laid off.[32] EEOC investigators have determined the California Ricoh facility "was tainted with national origin bias" and that less qualified Japanese employees had been retained or promoted.[33] The EEOC found that the dismissed American Ricoh plaintiffs had reasonable cause to warrant legal action.[34]

Foreign-owned banks presently control 21.5% of all U.S. banking assets, including 58% of all bank assets in New York and 33% of the assets of California. Given the widespread discrimination in hiring by Japanese firms, it is not surprising to learn that foreign-controlled banks engage in discriminatory lending practices.[35] In addition to being sued by a former employee for race and national discrimination in hiring, Dai-Ichi Kangyo Bank of Japan, the largest bank in the world, is charged with discriminatory lending practices. Former employees of the bank report that bank policy required lending officers to treat any loan application by a Hispanic person as "high risk" despite proven ability to pay or adequate collateral.[36] The allegations of discriminatory lending at Dai-Ichi Kangyo come at the same time as other claims of "redlining" by Japanese banks.[37]

Furthermore, the U.S. operations of Mitsui Bank Ltd. have come under the scrutiny of federal regulators and community organizations. The Greenlining Coalition maintains that Mitsui Bank has been unwilling to lend to minorities in violation of the Community Reinvestment Act.[38] On February 22, 1990, representatives of several community action organizations protested the proposed merger of Mitsui Bank and Mitsui Manufacturers Bank and urged the Federal Reserve to block this transaction.[39] Activists also picketed the offices of Taiyo Kobe Bank, Mitsui's merger partner.[40]

Although the Federal Reserve approved the transaction permitting Mitsui to acquire the New York trust unit of Taiyo Kobe

Bank, Ltd., Mitsui was put on notice of its failure to comply with the Community Reinvestment Act.[41] The Federal Reserve noted that Mitsui's application to convert the New York trust unit of Taiyo Kobe Bank into a bank would warrant a review of Mitsui's CRA noncompliance.[42] True to its word, the Federal Reserve announced in December, 1990 that it would hold a hearing to review Mitsui Manufacturers Bank's (now a subsidiary of Mitsui Taiyo) compliance with the CRA.[43] This was only the second public hearing granted by the Federal Reserve on CRA violations although over 300 public hearings had been requested previously.[44] Simultaneously, the House Banking Committee, chaired by Representative Henry B. Gonzalez (D-Tex), announced a planned hearing on CRA compliance.

The United States now faces the dilemma of welcoming foreign investment even though it may be inconsistent with our national goals of equality and nondiscrimination.

The situations described are dismaying and disturbing. America needs foreign direct investment. However, this investment should make a contribution to society and not add to our own problems of discrimination. I propose the enactment of new legislation that would condition future foreign direct investment by multinational corporations on their provision of employment, training, promotion and investment opportunities to Americans, and in particular women and minorities.

Legislation such as this is neither radical nor unduly burdensome. The landmark Investment Canada Act of 1985[45] establishes an agency "Investment Canada"[46] and review of potential

foreign direct investment in Canada[47]. The Canadian government enacted this legislation "to encourage investment in Canada by Canadians and non-Canadians that contributes to economic growth and employment opportunities and to provide for the review of significant investments in Canada by non-Canadians in order to ensure such benefit to Canada."[48]

Pursuant to the Investment Canada Act, the Investment Canada Agency evaluates prospective foreign direct investment according to several considerations. The factors to be considered by Investment Canada include:"the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment."[49] The Act also requires the Investment Canada agency to consider "the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part."[50] [51]

Such a review would not constitute an unfair barrier to trade and investment. According to the recently released report on Unfair Trade Policies and Practices by the Japanese Fair Trade Center, the Investment Canada program has not presented any problems for Japanese firms and Japanese investment in Canada has risen steadily since its enactment.[52]

Enactment and application of similar legislation will allow

the U.S. to continue to welcome foreign direct investment while requiring that this investment be consistent with U.S. domestic and international policies. Furthermore, consideration of the participation of Americans in the new venture would support equal opportunity for all in foreign direct investment.

Under the legislation I propose, prospective foreign direct investment would also be evaluated as to their prior investment practices abroad and in their domestic markets. If it is determined by the Department of Commerce that the prospective investor has violated or supported the boycott of Israel, the anti-apartheid laws, or women's or workers' rights internationally, future investment by this multinational may be either denied or conditioned upon remedial action by the company.

Congress has been generally unsatisfied with the Exon-Florio, national security review of foreign acquisitions in the United States. This dissatisfaction and tension stems from the abuses of Exon-Florio by domestic interests and the lack of consensus between the administration and Congress on the scope of national security review. However, the CFIUS approach and Exon-Florio review should be adopted for investment review focusing on equal opportunity not the undefinable problem of national security. The creation of a CFIUS-like interagency group consisting of the representatives of the EEOC, Department of Commerce, United States Trade Representative, Department of Justice and Department of The Treasury would be required before the investment may be made.

An open investment policy is an essential component of an

integrated and global economy. Under the correct circumstances, foreign direct investment presents tremendous opportunity for the host state and investor alike. The host state benefits from the increased employment opportunities, infusion of capital and transfer of technology that foreign investors bring with them. The foreign investor gains access to a new market of labor and consumers. Society benefits from the new relationship.

The proposed legislation will unite our twin aspirations of non-discrimination with our commitment to open investment.

1.Lash, "Unwelcome Imports: Racism, Sexism and Foreign Direct Investment," 13 Michigan Journal of International Law 1, to be published November 1991.

2.See Holusha," Japanese Faulted Over Black Hiring", The New York Times, November 27, 1988, Page A-28. See Also Cole & Deskins," Racial factors in Site Location and Employment Patterns of Japanese Auto Firms in America", California Management Review, November 1988.

3.Holusha. Id. Spokesman for the Japanese manufacturers challenged the study, claiming that the decisions were made because" land was available, there was good road and rail transportation, it was near the supplier base and there was an available workforce." Id.

4.See Graham, "Honda Learns Late About Bias, But it is Not Alone", The Los Angeles Times, March 31, 1988, p.7.

5.Hisayoshi Iwamatsu," 'Equal Opportunity' May be new for Foreign Companies in U.S.," Investor's Daily, August 9, 1990, Page 13.

6.See Hisayoshi Iwamatsu," 'Equal Opportunity', Id.

7.Galen & Nathans,"'White People, Black People ' Not Wanted Here", Business Week, July 19, 1989, Page 31.

8.Id.

9.See Collingwood, "Recruit Gets in Trouble in the U.S.", Business Week, March 25, 1991, p.37

10."Business feel the heat of U.S. antibias laws," Business Week, November 23, 1981, Page 57.

11.Hoch," Japanese Bank Discriminates, Suit Alleges", San Diego Business Journal, December 24, 1990, Pg 1.

12.See Healy, " Are Japanese Employers Biased or All Business-- Nintendo, other Companies Say Discrimination charges are misunderstandings", The Seattle Times, July 8, 1990.

13.457 US 176, 72 L. ed. 765 (1982).

14.See Sumitomo Shoji America, Inc v. Avagliano, 457 U.S. 176, 72 L.Ed 2d 765 (1982)

15.Friendship, Commerce and Navigation Treaty between the U.S. and Japan, Apr 2, 1953, 4 UST 2063, TIAS No. 2863.

16.See Article VIII(1), 72 L.Ed 2d 765. 770.

17.72 L.Ed 2d 765,770 (1982).

18.See Goldberg, " American Women in Japanese Company win'clash of cultures' suit", UPI, January 8, 1987.

19.Goldberg, Id.

20.See Frantz, "Japanese Unaccustomed to Either; Roles of Working Women, Minorities Pose Challenge," The Los Angeles Times, July 13, 1988, Page A-1. A C. Itoh employee describes the Japanese as engaging in ".. a benign, friendly sort of discrimination." Id.

21."Sex Discrimination Case Filed against C.Itoh", Reuters, February 27, 1987.

22.Adames v. Mitsubishi Bank, Ltd, 751 F. Supp. 1548 (E.D.N.Y. 1990.)

23.Adames, Id at 1552-53.

24.Adames, Id at 1553.

25.Id at 1553. Hisao Yokoyama, Chief Manager of Mitsubishi Bank Ltd.s, General Affair Department asserts that there is no company restriction on promoting non-Japanese employees. Mr. Yokoyama admits that "...it[promotion] would be necessary to acquire knowledge of Japanese culture, social structure and related Japanese institutions." Id.

26.Id. at 1561. The rotating staff at Mitsubishi receives training and promotions and is the opportunity that plaintiffs seek. Id.

27.Id. at 1561. While recognizing that "Japanese language and business skills may well be a legitimate requirement for many of these positions", Judge Sifton held that Mitsubishi failed to demonstrate "that there is a legitimate business reason that the vast majority of management positions be reserved for the rotating staff." Id. at 1561.

28.For example, Kazuaki Hikida, Personnel Manager of Mitsubishi International, observes that "Women don't expect to compete with men in Japan" Hikida believes that the nature of being a trader at Mitsubishi " ...involves entertaining a great many foreign visitors. This may mean going out drinking with them, or even taking them to see a movie on 42nd Street. Most women don't want to do that." This perception contributes to the inability of women to advance at many Japanese firms. See Lewin, "Sex bias or Clash of Cultures", The New York Times, April 8, 1982, Page 1.

29.See Ross v. Nikko Securities, 133 F.R.D. 96 (S.D.N.Y. 1990).

30.Ross v. Nikko, Id.

31.Id. The Nikko case was dismissed as a class action despite the allegations of female MBAs and other professionals who were denied promotions and employed as secretaries. Id.

32.Kilborn,"Americans Complain of Bias by Japanese Bosses in U.S.", The New York Times, June 3, 1991, Page A-1.

33.Id.

34.Id.

35.See, Koretz, "Foreign Banks Stepping Up Their Siege", Business Week, June 3, 1991, page 20.

36.See Hock, Id. Dai-Ichi Kangyo officials also are alleged to have characterized a loan with a U.S. government guarantee as high risk due to their perception that the government was bankrupt. Id.

37."Redlining" refers to a commercial lending practice of marking certain geographic areas as "too risky" for loans. See " Japanese banks; Yellow, black, red and green", The Economist, March 17, 1990, Page 24.

38.See Blackman,"Bank Merger May be Affected by Lending Protests", The Los Angeles Business Journal, March 5, 1990, page 3.

39.Blackman, Id. The Federal Reserve has the power to review proposed mergers of banks and to assess compliance with the Community Reinvestment Act. Id.

40.Stewart, "Activists Oppose Bank Merger; Finance: More than 100 demonstrate, claiming that the two Japanese firms fail to invest in communities from which they take their deposits.", The Los Angeles Times, February 23, 1990, Part B, Page 3.

41.Zuckerman," Fed Faults CRA Record of Mitsui", American Banker, March 30, 1990, page 2.

42.Zuckerman, Id.

43.See Corman,"Fed Sets Rare Open-Hearing on Mitsui Unit's CRA Steps", American Banker, December 20, 1990.

44."Fed Orders Public Hearings to Examine Japanese Banks' Performance Under CRA", BNA Banking Report, December 24, 1990. Bob Moore, Federal Reserve spokesman acknowledged that these hearings were rare but compared the process to"...something along the lines of a town meeting in New England, a chance to look at the issues." Id.

45.Investment Canada Act, Can. Stat. C. 28

46.Investment Canada Act, Chapter 28, section 6.

47.Glover, New, & Lacourciere, "The Investment Canada Act: A new approach to the Regulation of Foreign Investment in Canada, 41 Bus. Law 83, November 1985.

48.Investment Canada, Section 2.

49.Investment Canada Act, Section 20 (e).

50.Investment Canada, Section 20 (b).

51.Other factors that must be evaluated pursuant to the act are : " the effect of the investment on the level and nature of economic activity in Canada, including ...the effect on employment, on resources processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;" Section 20 (a); "the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada",Section 20 (c); "the effect of the investment on competition within any industry or industries in Canada", Section 20 (d) and " the contribution of the investment to Canada's ability to compete in world markets", Section 20 (f).

52.Japan Fair Trade Center," Report on Unfair Trade Policies and Practices: Trade Barriers and GATT obligations in the U.S., EC and Canada", June 1991.

Mr. LANTOS. Indeed, I want to thank all four witnesses.

I would like to begin with you—with Ms. Carraway. Let me commend you again for the courage you are displaying by testifying before the subcommittee on this subject.

Ms. CARRAWAY. Thank you.

Mr. LANTOS. What has been the reaction of your supervisors since they learned that you were going to testify?

Ms. CARRAWAY. Fair. I was also offered a larger salary and a new position in the company. This was yesterday.

Mr. LANTOS. Yesterday?

Ms. CARRAWAY. Yesterday. They decided that they—they could see that I would possibly be leaving the company. And my departmental manager I think is the only Japanese gentleman in the company who truly sees the difference between operating in Japan and operating in America, and he was very distraught over the possibility that I would leave because he knows that our largest account will go as well if I go.

And, at this time they offered me—well, the top position for an American in a business department, which is laughable, and an increase in salary, say by $4,000, which is also laughable, because my salary is bad enough as it is.

I mean, I would say that there was fear and shuttling around the office trying to figure out a way to make me very happy there. I would say the Japanese employers are afraid of me. They always have been because I really don't bow and scrape, and I don't lower my eyes, and I don't offer to get them coffee. In fact, I refuse to do those kinds of duties. And they're afraid of confrontation, therefore they really—when I ask for something I usually get it within the company, although I have to put up a little bit of a fight.

But I just don't feel that—no matter what they offer me, title or money, could convince me to stay with Sumitomo Corp. of America, nor would I recommend that anyone join that company if they are a woman.

Mr. LANTOS. How would you characterize an offer the day before you are scheduled to testify before a congressional committee of a promotion and a salary increase?

Ms. CARRAWAY. Well, at the risk of being sued for slander, unless there is a good attorney in the house, I would characterize it as a last minute, desperate plea to retain an excellent employee, one who has remained very loyal to the company up until this point, and I just—I view it as desperate. That would be my characterization of it.

Mr. LANTOS. Was there any explanation as to why this offer was made to you yesterday?

Ms. CARRAWAY. Initially, it is because they are afraid that I am leaving the company very soon. That was the explanation, to maintain my employment with Sumitomo Corp. of America.

My departmental manager and I have a very good working relationship, probably, like I said, the only Japanese manager who really understands the difference between personal life and business, and he does not want to lose me as an employee because I'm very good at my job. And so I see that as the reaction of fear of losing someone who does bring in multi-million-dollar accounts into the department.

Mr. LANTOS. Ms. Carraway, you wrote the subcommittee that a Japanese manager told you that any promotions women receive are "tokenism to protect the company from lawsuits."

Ms. CARRAWAY. Yes.

Mr. LANTOS. Was this a direct quotation?

Ms. CARRAWAY. Direct quotation by two Japanese managers. One is not employed by Sumitomo He is a manager. He works only on commission because he is now an American citizen. He came here and decided to stay. And his advice to me was, "Kimberly, any promotions you get will be tokenisn to protect the company. They have to fulfill court settlements and they have to look good. Therefore learn what you can from this company and get out." That was his advice.

And the other gentleman, who I have to see every day, who sits very close to myself, told me that my, my promotion was simply tokenism because, No. 1, I stood up about the pornography issue in the office. They can do this at home but they can't do it in front of me at my place of employment. And they were very afraid that I would bring a lawsuit. And also, again they are facing some pending charges by another employee, so they were in a real hurry to promote some people this last July.

Mr. LANTOS. You mentioned that important circulars are written in Japanese, and even those that are written in English are circulated only to Japanese managers, ignoring Americans with relevant interests.

Ms. CARRAWAY. Yes.

Mr. LANTOS. What are American employees told about this practice if they complain about being left out?

Ms. CARRAWAY. The female in charge of the American personnel explained it to me like this. She said, "That's simply the way it is," and I am to adjust myself to their ways.

As you can see, this is the kind of circulars. This is a photocopy of the piece of paper that is attached. The kind of information that is passed over the Americans would be information about the economy in the United States, information about our industry, I mean the automotive component industry and that is changing very, very frequently. Therefore, I need that information to better deal with my employee—I mean my customers. And other employees as well need this information. We don't see that. It is passed only to the departmental manager and it is his choice to share it with us. Him being Japanese, we never see it unless I sneak it off his desk. You know, I have to literally take it off his desk and read it on my own time, make copies, take it home at night, because it is not passed to my desk. Neither is it passed to the other Americans in the company.

Mr. LANTOS. When you were hired were you told that fluency in the Japanese language is required for your job or for any promotion?

Ms. CARRAWAY. No. I was told that it is not required because all of our overseas transmissions are done in English. I send telexes and I receive telexes everyday, facsimiles, in English. I have no need really for the Japanese language, except to understand some of the basic cultural differences, and we have people in the office who can handle any kinds of Japanese transactions. Usually those

are above our level of responsibility. Japanese is not a prerequisite for employment at Sumitomo You really don't need it. I don't use it.

Mr. LANTOS. Is it your impression that sexual harassment, the flagrant use of pornographic materials is fairly widespread in Japanese-owned companies?

Ms. CARRAWAY. Yes. It is extremely widespread. And in every man's desk you will find a calendar like—as I stated before, produced by Sumitomo Group, which is Sumitomo Insurance, pornographic calendars with our corporate logo. And what if a customer should come through our offices and see that? It is as if I condone that, for my corporate logo to be on it. That is not acceptable to me because I don't condone that.

Mr. LANTOS. Thank you very much. Congresswoman Ros-Lehtinen?

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Ms. Carraway, if I could continue with the same type of questions. Certainly what you have described is a terrible working environment and in no way would I condone it. I am just trying to move from a particular situation in a particular company to the generalization that this is widespread in Japanese companies.

Ms. CARRAWAY. Yes.

Ms. ROS-LEHTINEN. And since you have said that I am wondering what information you have that would lend to that conclusion. This, your statement and your testimony and your answer to the questions really point to a terrible working environment.

Ms. CARRAWAY. Yes.

Ms. ROS-LEHTINEN. I just don't know whether it is a terrible working environment in Sumitomo Corp. or whether you can really use that example to say this is what Japanese—this is what it is like for an American woman to work in a Japanese company——

Ms. CARRAWAY. Yes.

Ms. ROS-LEHTINEN [continuing]. Which is I guess what we are trying to get at.

Ms. CARRAWAY. Yes.

Ms. ROS-LEHTINEN. Because I know, and I am sure that you do too, that there are many American-owned companies where the sexual harassment practices are commonplace.

Ms. CARRAWAY. Right.

Ms. ROS-LEHTINEN. And, in my area in Miami there have been cases that have been portrayed in the newspaper and they are "good ole boy" working environments.

Ms. CARRAWAY. Right.

Ms. ROS-LEHTINEN. So what I am worried about is to generalize and to say this sexual harassment practice is widespread in Japanese companies based on my experience. In other words, what happens to me is what is known to all.

Ms. CARRAWAY. OK.

Ms. ROS-LEHTINEN. And I am not sure that we can jump from your conclusion, from your terrible experiences to that conclusion.

Ms. CARRAWAY. Right.

Ms. ROS-LEHTINEN. So I would like to ask you why do you generalize and say this is widespread? You have talked to other American women?

Ms. CARRAWAY. Yes, I have.

Ms. ROS-LEHTINEN. And could you just expound?

Ms. CARRAWAY. There is a black woman who works in my office who did work for another Japanese corporation, and she said the problem was just as bad. And when she came to Sumitomo she specifically asked them: "Do you have this problem in the office? These are concerns of mine. What is the personnel department of Sumitomo doing to combat this?" And they made great promises that you will not run into these problems in the office, but she has run into these sexual harassment as well as racial problems.

Another colleague of mine, who no longer works for a large Japanese firm but lives in the Chicago area and used to work for a Japanese firm in Chicago, faced these same exact problems, in fact, the same movie rental guy, chances are there is a system of these video rentals that services only Japanese corporations. And again these two colleagues were able to verify that this was the case in their experiences and they worked for two separate companies.

Ms. ROS-LEHTINEN . So you have experiences from conversations that you have had with other——

Ms. CARRAWAY. Right. Right. And comparison.

Ms. ROS-LEHTINEN [continuing]. Women and women minorities that they have had sexual harassment problems at other Japanese-owned companies?

Ms. CARRAWAY. Right. At other Japanese firms. I do not have personal experience at another Japanese firm.

Ms. ROS-LEHTINEN. I was going to ask, your experience with a Japanese-owned company is limited to Sumitomo?

Ms. CARRAWAY. That is correct.

Ms. ROS-LEHTINEN. The other job experiences have been with American-owned companies?

Ms. CARRAWAY. My own company; yes.

Ms. ROS-LEHTINEN. Your own company. So this is the only Japanese-owned company?

Ms. CARRAWAY. This is the only Japanese firm. I would like to add, though, that some of the firms that service our office, such as air freight, services like that, transportation services, do have women who work for these firms and I talk to them everyday, and they ask how it is going in my office. And they would be able to easily verify discriminatory practices in their offices as well because they are Japanese-owned air freight companies. That is the only kind we use.

Ms. ROS-LEHTINEN. How long have you been working with Sumitomo?

Ms. CARRAWAY. One year.

Ms. ROS-LEHTINEN. One year.

Ms. CARRAWAY. Yes.

Ms. ROS-LEHTINEN. And are there any Japanese women working in Sumitomo?

Ms. CARRAWAY. One, and it took her 20—almost 25 years to get the title of manager.

Ms. ROS-LEHTINEN. She is Japanese born working in——

Ms. CARRAWAY. She is a Japanese woman. She is an American now. She came to the United States as a child. But again, she speaks fluent Japanese And it took her almost 25 years to even get

a middle management in the treasury department, which is traditionally very conservative and male dominated in our company.

Ms. ROS-LEHTINEN. What percentage of the work force in Sumitomo are women?

Ms. CARRAWAY. I would say that over half.

Ms. ROS-LEHTINEN. How many employees?

Ms. CARRAWAY. We have a—we had a total of 60. I would say now we have reduced our staff to about a little over 50, 50 employees, and over half of them are women.

Ms. ROS-LEHTINEN. What kind of positions do they hold?

Ms. CARRAWAY. They are definitely not in positions of any kind of responsibility. They were initially secretarial positions before the company got sued. They changed the structure of their titles and tried to make a change in the kinds of promotions and pay raises they gave, and what they simply did is changed the titles of the old positions and kept the job descriptions the same.

And, if you look at the five—only five positions that I can possibly hold in this company, unless they break some concrete rules for me, the job description is the same. I will be filing as an account manager and doing basic bookkeeping for my department, just as I would as the lowest—in the lowest position of the sales and customer service assistant. Whereas the managers take numerous business trips, they bring in new business. I am bringing in new business but I get no credit for that.

Ms. ROS-LEHTINEN. And have you had the opportunity to discuss discrimination practices with your managers to discuss the calendars and the tapes?

Ms. CARRAWAY. Numerous times.

Ms. ROS-LEHTINEN. Verbally or written?

Ms. CARRAWAY. Verbally. Verbally. Private meetings with the personnel director in our office, who is Japanese, and with my one departmental boss, who is very, very conciliatory toward my position, and they always—their comment is always, "Well, the Japanese corporations do not evolve quickly enough. We are trying to make changes." But I see that only as lip service.

I have put my concerns in writing at this time to the company, submitted a letter to my personnel department outlining my concerns, and they are very well aware of my concerns. I have been making them known since my second month on the job.

Ms. ROS-LEHTINEN. And the other female employees, which is half the work force, they have had similar opportunities to bring their——

Ms. CARRAWAY. Oh, yes. Many of them have copies of letters they have submitted, especially the one minority female. She has tried desperately to get a response from management on many of her concerns. I was instantly granted tuition reimbursement for my international management, international economics program at Loyola. But she has had a heck of a hard time getting them to even respond to her request for tuition reimbursement, to get involved in that program.

Most of the females in my company see a serious problem, but many of them, unfortunately, stick their head in the sand. I just won't do that.

Ms. ROS-LEHTINEN. You choose to stay at the corporation——

Ms. CARRAWAY. No, I will leave. I will leave Sumitomo.

Ms. ROS-LEHTINEN. And have you had any meetings with the other female employees to let them know about your upcoming testimony, and have they said anything to you?

Ms. CARRAWAY. Yes, they have. They have supported me in my goal to make a positive change. But, unfortunately, many of them are young mothers, some of them not married with children, no college education, maybe 2 years, maybe some sort of vocational school, and they are just thankful right now, in the job market, to have a job, and they are very fearful of rocking the boat. I, on the other hand, I am not afraid. I have a good education and I stand on my principles.

Ms. ROS-LEHTINEN. Thank you, Ms. Carraway.

Mr. Chairman, if I could direct some questions to——

Mr. LANTOS. We will question the other witnesses after we are finished with Ms. Carraway.

Congressman Shays.

Mr. SHAYS. Ms. Carraway, I think your statement was very straightforward and would illustrate what is happening in this one company. Have you worked for any other company other than this company?

Ms. CARRAWAY. No, I have not.

Mr. SHAYS. OK. I just want to say that the value of your testimony is not what you have heard from your friends about other companies. The value of your testimony is what you have heard about this company. We can put that alongside all the other testimony about all the other companies and there is a definite pattern here.

Ms. CARRAWAY. Right.

Mr. SHAYS. And so your statement is certainly supporting that. But let me just thank you for coming here.

I would say to you, Mr. Chairman, that the Japanese have a lot of American dollars because Americans buy a lot of Japanese products. They are going to spend their dollars to fund our national debt, they are going to spend their dollars to buy our land and resources, and they are going to buy American companies and they are also going to set up companies here. And the one thing that I agree with you, professor——and others who have mentioned it—is that they can export discrimination in the process. And we certainly don't want to import it, and we will be following this up.

I have a feeling that your company is going to change in years to come.

Ms. CARRAWAY. Well, I think they will have a new attitude tomorrow.

Mr. SHAYS. Well, I think they will change, and I think in large measure it will be because of your testimony. And I thank you for coming.

Ms. CARRAWAY. If I have a job.

Mr. SHAYS. Well, you may not have a job there, but it will benefit others. Maybe you will have a job there if you choose to stay. Because I happen to believe that people can change and businesses can change, and sometimes they need a little push.

Ms. CARRAWAY. I just think they will be running in fear when they see me heading up the elevator.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. LANTOS. Let me turn to Mr. Fitzgibbon next, if I may.

You said that your first order given to you at Nomura was not to hire blacks.

Mr. FITZGIBBON. That's correct.

Mr. LANTOS. Who gave you that order?

Mr. FITZGIBBON. My Japanese supervisor.

Mr. LANTOS. And that was in 1973?

Mr. FITZGIBBON. No, that was in 1975.

Mr. LANTOS. Seventy-five. Were there any blacks hired at the company prior to your leaving?

Mr. FITZGIBBON. No.

Mr. LANTOS. Was there, in your view, discrimination against female employees?

Mr. FITZGIBBON. You would have to say yes, but there is a non-factor. They really weren't considered. There are basically two classes. There is the professional and the clerical, and the professional were white males or Japanese males. Women were not hired in that capacity while I was there.

Mr. LANTOS. Did you run into items of religious discrimination?

Mr. FITZGIBBON. Yes, I did.

Mr. LANTOS. Can you tell us about it?

Mr. FITZGIBBON. Yes. I was ordered not to hire Jews either.

Mr. LANTOS. Was there any other category that you were told not to hire?

Mr. FITZGIBBON. I think that pretty well covers it, Congressman.

Mr. LANTOS. Was there any evidence of age discrimination?

Mr. FITZGIBBON. Not at that particular time because the company was in the process of evolution. However, as the years passed, yes, it did surface. I know of two particular instances where friends of mine were forced to plead their cases to the Equal Employment Opportunity Commission based on age.

Mr. LANTOS. Did you inform your superiors about U.S. equal employment laws?

Mr. FITZGIBBON. No, I did not at the time. You just take the orders. After all, I interfaced with the Japanese You know, who else do you interface with—my superior? You see you can't do that. It's a nod that you get, and they dance their own way.

Mr. LANTOS. In retrospect, should you have advised them of laws?

Mr. FITZGIBBON. Congressman, I did that.

Mr. LANTOS. And?

Mr. FITZGIBBON. I got fired.

Mr. LANTOS. You attribute your firing to you advising your Japanese superiors of the existence of equal employment opportunity laws?

Mr. FITZGIBBON. Security laws. My major concern at Nomura Securities was its conduct——

Mr. LANTOS. Yes.

Mr. FITZGIBBON [continuing]. In regards to the security laws.

Mr. LANTOS. Yes.

Mr. FITZGIBBON. And, you know, given what you read in the newspapers these days——

Mr. LANTOS. Yes.

Mr. FITZGIBBON [continuing]. Looks to me like I was a little bit ahead of myself. And, incidentally, this is the subject of a coming book on—that I have written, "Deceitful Practices: Nomura Securities and the Japanese Invasion of Wall Street." Burch Lane is the publisher. It is due out October 17.

Mr. LANTOS. Mr. Cohen, the discriminatory comments and anti-Semitic slurs that you reported, do you feel that these were remarks of isolated individuals, or do you feel that they reflect a companywide policy of discrimination against minorities?

Mr. COHEN. I think very clearly it reflects a companywide policy. It is one of the things that confirms that Japanese officials and even American officials for MMSA or Mitsubishi Corp., don't speak their own thoughts unless they are approved by their superiors. I mean, that became very clear to us in our personal experience with them.

Let me say this in relation to discrimination. Yes, there is no question the people we came in contact were discriminating against Jews and other minorities. But deeper than that is they discriminate against proud independent Americans that disagree with them. I mean that is so crystal clear it is like painted on the wall. I mean, when we disagreed with them about buying Ford cars versus Mitsubishi cars—just to make it real, real brief, every year you have to buy cars and we had always purchased domestic cars. And when we told them for the—in June 1990 what the program was for the fall cars, the 1991 model cars, that we could get 25,000 Ford cars and get an incentive and rebate and advertising program from Ford of $25 million, Mitsubishi said we cannot match that and we are not going to match it. But what they did do was try to pressure us to ignore this better deal for the company and buy Mitsubishis anyway, or at least buy some Mitsubishis in conjunction with the Fords. And we refused to do that because, as I mentioned to you, our monetary compensation was based on the profitability of the company and that is what our fiduciary responsibility was. The relationship deteriorated overnight when we would not agree with them, and we kept stressing our independent thoughts. I mean, they just cannot stand that.

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. To follow up with Mr. Cohen, why would we believe that the business practices, the terrible procedures which you encountered dealing with Mitsubishi is related not to business dealings but actually because of Japanese discriminatory practices? I am not talking about the anti-Semitic remarks and that terrible aspect of it, but the business side of it. The part where they are trying to get the Cohen family out and they are trying to get total control. Why should we assume that that is tied to Japanese practices and not something that unfortunately happens in the good old U.S.A. between American companies all the time. A business entity wants to gobble up another one and force those folks out of the structure. Why should we conclude from that that this is somehow tied to Japanese practices?

Mr. COHEN. Well, let me say this to you. I have dealt with a lot of large American companies like Seagrams, Archer Daniels Midland, Greyhound, General Motors, and Ford, and I have never seen a large American corporation deal in bad faith, really in bad faith,

like Mitsubishi does. That is one aspect of it. American companies are difficult sometimes and they are tough, but they certainly are fair, and when they sign a contract they deal in good faith and live up to it. Mitsubishi doesn't—signing a contract means absolutely nothing to them. They sign it just as part of the negotiating process, and when they find some provision in the contract that they don't want to live up to they just don't. And their attitude is, Hey, sue me. Meantime we are going to do what we want to do.

And does it prevail in other Japanese companies? Obviously, our personal experience is with Mitsubishi, but I must say this to you. On maybe 20 or 30 different occasions when we had our negotiations with Mitsubishi they impressed upon us that they are one of the largest corporations, conglomerates, keiretsu, whatever word you want to use, in the world, and they kept stressing to us they have the largest brewery in the world, Kirin Brewery; one of the largest camera companies, Nikon Camera; their bank, Mitsubishi Bank is the fourth largest in the world; their Tokyo Marine Insurance Co., which was to provide all of our insurance, was the largest in Japan, and maybe in the world; the Mitsubishi Import-Export Co. was the largest one in Japan. So I have to believe that this large, huge conglomerate represents a pattern of all Japanese companies. Our personal experience is only with Mitsubishi. But I can't believe the second or third or fourth largest organization in Japan is so different than the rest of them.

Ms. ROS-LEHTINEN. Ms. Carraway had discussed discrimination of women in the workplace: that they cannot get promotions that they deserve, they are passed over, they don't have the perks that other folks get. And you were discussing about the anti-Semitic nature of your business dealings with the Japanese

Do you have—and I will ask each of you, Ms. Carraway to comment on any anti-Semitic environment that she might have noticed in her Japanese-owned company where she worked; and, Mr. Cohen, if you have any experiences related to discrimination against women in your dealings with Mitsubishi?

Mr. COHEN. Yes, I have a very intimate knowledge of——

Ms. ROS-LEHTINEN. In other words, what I am trying to get at, maybe if I am a redhead and people do bad things to me, I think it is antiredhead. I just want to make sure that when we discuss these discriminatory practices, maybe—are we looking at it just because I happen to be this, therefore these people treat me bad. It is because they don't like red hair or they don't like my religion or they don't like my sex. Maybe it has nothing to do with Jews or women. It has to do with Americans, perhaps, and that because you are a woman you see it as antiwoman and because you are Jewish you see it as anti-Semitic. I don't know, so I am trying to see if you could put your—wear someone else's shoes for a while and see if you—did you see any instances of discrimination against women?

Mr. COHEN. Yes, I did. Let me say this to you. I am old enough that when I was a young fellow traveling in the South I understood discrimination very well, and a lot of it is subtle and sometimes in the early fifties it was very blatant. I used to travel and I would go into an airport and see the bathrooms, and the signs would say "White" and "Black" for bathrooms. I mean that was the most hor-

rible experience in the world. Thank God, that has been eliminated. And I used to see signs on restaurants, "No dogs or Jews allowed." So I understand discrimination, I honestly do, and I am not paranoid about it.

My daughter who, of course, is a female worked for us as vice president of marketing. When Mr. Yoshida used to walk in the executive offices, if I wasn't talking to my daughter he ignored her completely. He wouldn't even say good morning. If she was talking to me, he would say hello to me and then he would say hello to my daughter.

But there obviously is a cultural difference between Japanese people that are raised in Japan and Americans But I agree with everybody else here: If they want to do business in this country they should comply with American rules and American sense of fair play and American obligations not to discriminate against whether it be Jews or females or any other minority.

Ms. ROS-LEHTINEN. Ms. Carraway.

Ms. CARRAWAY. Well, I would say that—to reiterate what he said, it is definitely a cultural—there is a cultural mindset because as a woman most of the Japanese men are afraid to go like on the overnight business trip with a woman who is not displeasing to look at because then they will have to defend themselves against claims that they are having an affair or that they—they were afraid it would hurt my career. I was told by my former boss that being attractive would work against me in the company just as well as being ugly would.

Ms. ROS-LEHTINEN. I am sorry, Ms. Carraway. I mainly wanted to know——

Ms. CARRAWAY About the anti-Semitic?

Ms. ROS-LEHTINEN. Right. If there was——

Ms. CARRAWAY. We, as far as I know, and I don't delve into other people's personal religious beliefs, I would not say anti-Semitic is a problem in my office because nobody really discusses their religion. They are a completely different religion and we both observe our own holidays.

Ms. ROS-LEHTINEN. Mr. Cohen, you have taken legal action against Mitsubishi?

Mr. COHEN. Yes, we have.

Ms. ROS-LEHTINEN. And will there be further action on that front?

Mr. COHEN. Oh, absolutely. We are in the Florida courtrooms and we have our complaints for breach of contract, to say it rather simply, and it is taking a long and tortuous path.

Ms. ROS-LEHTINEN. Is it a business-related complaint as so many others, or are you taking a discriminatory approach to the litigation? Do you believe that, in other words, the anti-Semitic environment or the harassment of American employees or is it based on contracts and business dealings?

Mr. COHEN. It is actually based on both. Our discharge is based on breach of contract as well as discrimination, and then there are many, many breach of contract disputes that are in the court process.

Ms. ROS-LEHTINEN. Thank you. Thank you, Mr. Chairman.

Mr. LANTOS. Congressman Shays.

Mr. SHAYS. Thank you, Mr. Chairman.

Sometimes a congressional hearing can be a very important medium for individuals. I am just a little troubled, Mr. Fitzgibbon, by one or two comments you made, a reference to a book or the reference that you worked for a company and now have left. Let me just be clear.

How long did you work for Nomura Securities?

Mr. FITZGIBBON. Almost 5 years. It is in my statement.

Mr. SHAYS. From when to when?

Mr. FITZGIBBON. Yes. From May 1973 to December 1977.

Mr. SHAYS. OK. And then what have you been doing since then? I am sorry.

Mr. FITZGIBBON. Yes. From January 1978 until October 1990, I was with Sanyo Securities America, another Japanese-owned securities firm.

Mr. SHAYS. And you found the same discrimination in both companies?

Mr. FITZGIBBON. Yes.

Mr. SHAYS. OK. And the same practice of don't hire any blacks and don't hire any Jews?

Mr. FITZGIBBON. Yes. And I wasn't involved in the hiring process at Sanyo.

Mr. SHAYS. But for 5 years you found yourself in a position where you succumbed to that request?

Mr. FITZGIBBON. Yes. And I was in that position only 2 years, Congressman.

Mr. SHAYS. But you succumbed to that request during that time?

Mr. FITZGIBBON. Yes, and I consulted with another American there for advice on how to follow it.

Mr. SHAYS. Sir, I am not saying what I would do.

Mr. FITZGIBBON. Yes.

Mr. SHAYS. I just want to make sure I know what you did. You agreed to not hire any blacks or any Jews?

Mr. FITZGIBBON. I did not do the hiring. I did the initial interviewing.

Mr. SHAYS. OK.

Mr. FITZGIBBON. Of those qualified candidates——

Mr. SHAYS. You agreed to be part of that process? It is a simple answer. You know, it may be a difficult one to say, but just tell us the truth.

Mr. FITZGIBBON. Well, under duress, yes.

Mr. SHAYS. Pardon me?

Mr. FITZGIBBON. Under duress, yes.

Mr. SHAYS. OK. Mr. Cohen, I find one of the comments you make a little unsettling because you are too smart a businessman to make a claim that American businesses, and some American businessmen are women, don't attempt to take over a company and then take over all of it and try to get out some of the previous parties. I mean clearly you have seen that happen.

So I just want to register my problem with your statement because I think you have taken every Japanese company and every Japanese and painted them with the same broad brush that they may choose to paint Americans I think you are guilty of the same thing, very candidly.

The only experience you have to tell us is your experience, and that could be the result of a Japanese company or it could be the result of certain Japanese businessmen or women. And we will have to compare that to other stories we hear, but we could have testimony after testimony of American businessmen and women who have gone through the same terrible experience from an American company. Wouldn't you agree?

Mr. COHEN. Oh, I agree with you 100 percent. In fact, I thought I made it very clear my only personal experience is with the Mitsubishi Corp.

Mr. SHAYS. OK.

Mr. COHEN. But it is so big in the world that I am assuming, and that could be an incorrect assumption. No question about it.

Mr. SHAYS. No. No. What you are doing is you are painting a broad brush.

Mr. COHEN. Yes.

Mr. SHAYS. Then you just go off on a tangent that is not helpful to the committee.

The one thing I found interesting, and I would love to pursue this with you, is I have often read and seen examples where Japanese companies want to choose to buy from certain suppliers, and I have heard and read that they would have to be Japanese and there would be an affiliation. You had to buy insurance from the Japanese insurance company?

Mr. COHEN. Part of the understanding when we made our arrangement with Mitsubishi—we were a self-insured company for most insurance was that Tokyo Marine would assume all of the insurance responsibilities for Value Rent-A-Car. Yes.

Mr. SHAYS. This was not a publicly held company? It is a privately held company?

Mr. COHEN. Value Rent-A-Car?

Mr. SHAYS. Yes.

Mr. COHEN. Yes, sir, it was privately held.

Mr. SHAYS. You had 20 percent—you still have 20 percent of the——

Mr. COHEN. Yes.

Mr. SHAYS. But basically, are they saying to you that you would have had to buy insurance from a Japanese company even if you could have gone to an American company or a European company or another company that would give that same insurance at less price?

Mr. COHEN. We had a system in effect that was cheaper than Tokyo Marine, and as part of the—Mitsubishi assured us that Tokyo Marine would be as competitively priced as what we were doing; that is, some American companies, an offshore company for some excess insurance and self-insured for the rest. And they assured us Tokyo Marine would be as competitive as anybody else. And they were supposed to do that the next day after the closing. It actually took them a year to do it and it was like $150,000 or $200,000 more per year than what we had been paying.

Mr. SHAYS. Let me ask you this. Was buying American cars, the Fords, a better business decision than buying a Japanese automobile?

Mr. COHEN. Oh, absolutely. As I said, we got a $25 million incentive package from Ford. The most we would have gotten from Mitsubishi, just trying to compare apples to apples, is about $7 million. So there was about an $18 million difference between Mitsubishi cars and Ford cars.

And just as an interesting note, when the Cohens left Value roughly 99 percent of our fleet was domestic cars. As of yesterday, Value's fleet is 90 percent Mitsubishis and 10 percent domestic.

Mr. SHAYS. Well, I thank you for your testimony, and I can imagine the humility you and your family have gone through. I appreciate your sharing your particular experience with us. Thank you, sir.

Mr. COHEN. Thank you.

Mr. LANTOS. Thank you. Congresswoman DeLauro.

Ms. DELAURO. First, let me apologize to the witnesses for not staying throughout the entire testimony. I admire your courage. I had to testify before another committee. So that if I am repetitive just let me know.

Mr. Fitzgibbon, I just wanted to follow up on a question of Congressman Shays, if I might. In your testimony you said the very first order given you as a personnel manager at Nomura was not to hire blacks, and you said that under duress that you complied.

Did you ever have any conversations about any of that with the company, about this practice?

Mr. FITZGIBBON. Well, I was a little bit taken aback by that comment, you know. And, as I recall, my Japanese gave it not to me so much as a hard and fast order with Thor's hammer coming down on the head, but as more as a confidential piece of advice. You know, I wasn't prepared for that. You just look at him. You walked away.

Ms. DELAURO. What do you think would have happened if you had not complied with the——

Mr. FITZGIBBON. Well, to begin with, several blacks did come in, generally from the West Indies, you know, with that clipped British accent, and there is also a possible question about a green card. The other thing too, though, is do the initial screening process, and had I passed anybody along that didn't fit the parameters it would have been rejected. And I thought, you know, it would be more kind than anything else to thank him very much for the time and let it go at that, rather than drag him back with high hopes that were to be dashed.

Ms. DELAURO. Did you ever break that dictum and just go ahead and say——

Mr. FITZGIBBON. No. In a Japanese company the gaijin do as they are told.

Ms. DELAURO. I am sorry. I didn't hear you.

Mr. FITZGIBBON. In a Japanese company gaijin do as they are told.

Ms. DELAURO. Let me ask you, and again, you may have answered this, your status with the EEOC at the moment? You said you had a complaint. Is that still pending?

Mr. FITZGIBBON. Yes, that is correct.

Ms. DELAURO. And where does it——

Mr. FITZGIBBON. It went through the review process, given the right to sue. I have written twice for the file. I have received no acknowledgment on either. I really don't understand why they don't at least acknowledge it, far less send you the file. You have a right to, I understand, under the Freedom of Information Act.

Mr. LANTOS. I think one of your earlier comments needs some interpretation.

Mr. FITZGIBBON. Certainly.

Mr. LANTOS. What you said was in Japanese companies Americans do what they are told to do. Correct?

Mr. FITZGIBBON. Yes, sir.

Mr. LANTOS. OK. Thank you.

Ms. DELAURO. Thank you, Mr. Chairman.

Mr. LANTOS. Well, I want to thank all four witnesses. Your testimony adds to the witnesses we have had at our two earlier meetings. They underscore special aspects of discrimination against women, against ethnic religious minorities, but an underlying pattern of discrimination against U.S. citizens. And, on behalf of the subcommittee, I want to thank all four of you for your very valuable testimony.

Our next panel consists of Mr. Motoaki Ibano, president, Recruit U.S.A.; Mr. Keiji Matsushima, president, DCA Advertising; and Mr. Hisashi Kubo, chairman, Ricoh Corp.

[Witnesses sworn.]

Mr. LANTOS. On behalf of the subcommittee, I want to thank all three of you gentlemen for appearing. We fully understand that in some instances there may be some linguistic difficulties and we will be very pleased to work with you by allowing your interpreter to translate your—interpret your testimony.

Your prepared statements will be entered in the record in their entirety, and you may proceed in your own way. We will begin with you, Mr. Motoaki Ibano, president, Recruit U.S.A.

STATEMENT OF MOTOAKI IBANO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, RECRUIT U.S.A., ACCOMPANIED BY EDWARD F. NELSON, VICE PRESIDENT FOR CORPORATE AFFAIRS, AND WALTER COCHRAN-BOND, ATTORNEY, PROSKAUER, ROSE, GOETZ & MENDELSOHN

Mr. IBANO. Mr. Chairman, members of the subcommittee, good morning. And thank you for this opportunity to speak with you today. My name is Motoaki Ibano. I am the president and chief executive officer of Recruit U.S.A. Appearing with me today is Edward F. Nelson, vice president for corporate affairs, and Walter Cochran-Bond, attorney, of Proskauer, Rose, Goetz & Mendelsohn. Mr. Cochran-Bond represented us in the negotiations with the EEOC. We are appearing to respond to testimony received at prior hearings and to answer any questions the subcommittee might have.

Recruit U.S.A. includes a holding company with three subsidiaries, totaling 27 full-time employees. The testimony before this subcommittee has related to one of those subsidiaries known as International Career Information, Inc., or ICI, which was a party to the consent decree signed on June 26, 1991, this year.

ICI publishes a quarterly magazine entitled Shushoku Joho, or SJ, which is distributed throughout the United States and Europe. SJ contains advertisements placed by Japan-based employers for job opportunities in Japan.

In 1985, an employment agency known as Transworld Recruit, or Interplace, was established in California. In October 1988 this Recruit U.S.A. subsidiary was sold. Since that time Recruit U.S.A. has had no corporate relationships with Interplace.

On July 23, 1991, a former employee of Recruit U.S.A. testified before this subcommittee regarding certain business practices. Let me briefly respond to that testimony.

Testimony was given that Recruit U.S.A. provided followup services to advertisers.

Mr. LANTOS. Could I stop you for a moment?

Mr. IBANO. Yes, Mr. Chairman.

Mr. LANTOS. You indicated that on July 23, 1991, a former employee of Recruit U.S.A. testified before the subcommittee. My question is, this former employees name, as you know, is Paul Schmidtberger?

Mr. IBANO. Yes, Mr. Chairman.

Mr. LANTOS. Were you present at the subcommittee's July 23 hearing? Did you hear Mr. Schmidtberger's testimony personally?

Mr. IBANO. Yes, I was.

Mr. LANTOS. You were. Were there any other company officials who came here to listen to his testimony?

Mr. IBANO. On July 23?

Mr. LANTOS. I am sorry. Yes.

Mr. IBANO. I didn't recognize that. I don't know, sir.

Sorry. Mr. Nelson was here.

Mr. LANTOS. Yes. So the two of you heard the testimony?

Mr. IBANO. Yes.

Mr. LANTOS. Please go ahead.

Mr. IBANO. OK. Generally, this followup was limited to a basic screening of educational background and legal right to work in Japan. In particular, the witness referenced IBM-Japan and Meiko Securities. IBM-Japan's requirements included Japanese citizenship or the ability of the people who responded to the advertisement to qualify for a work visa to be employed in Japan. The instructions of IBM-Japan were misinterpreted by the witness—I am sorry—misinterpreted by the Los Angeles manager and resulted in the memo that was described by the witness. In the Meiko case there is no claim that any screening took place.

The witness expressed concern to management at Recruit U.S.A. about the screening practices in August 1988. Upon hearing of these complaints, I and an assistant vice president flew to Los Angeles from our New York headquarters to resolve these problems. I ordered the immediate discontinuation of these practices and began taking affirmative steps to remedy the situations. ICI no longer provides any followup screening for advertisers.

The witness also described a coding system used by Interplace I was unaware of this practice until May 1989. It is my understanding that Interplace ordered that the coding be stopped before that time.

The Washington hearing also contained testimony delivered by the chairperson of the EEOC describing the consent decree agreement between the EEOC and ICI. There are two key points contained in the decree.

First, ICI will sponsor two seminars in Japan on United States employment law, containing EEOC-approved topics and speakers. They will, in effect, serve as a forum for the EEOC in Japan. We have already received a tentative commitment from Lance Liebman, the dean of the Columbia University Law School, to be a key speaker at the seminars. We have also attempted to obtain speakers from the governmental agencies, including the EEOC, but we have been told that such participation might violate governmental policies. If the subcommittee can provide any assistance in this area, it would be greatly appreciated.

Second, we understand that the subcommittee has inquired into the adequacy of the $100,000 backpay fund created by the agreement. From our perspective, this fund exceeded our potential liability for the following reasons:

We believe that there was no backpay liability for the screening of applicants for jobs in Japan. In *EEOC* v. *Aramco* the U.S. Supreme Court decided that title VII does not apply to jobs located outside the United States, even if they are with American companies. In our case, the jobs were in Japan with Japanese companies.

If there were liability, the amount of backpay due any person by ICI would have been minimal. The jobs in question required bilingual and bicultural skills in addition to the ability to work in Japan. This applicant pool is small and very much in demand; therefore, all of the qualified applicants would have had almost no loss of pay.

Finally, you have asked us to respond to questions regarding Japanese employment practices and employment law. From my personal history I must say that I have no real experience with these subjects. My career includes 12 years as a systems engineer with an American company in Japan, pursuit of my MBA at Northwestern University in Illinois, and now executive positions with Recruit U.S.A. There are many experts in the United States that could answer your questions; unfortunately, I am not one of them.

Thank you for the opportunity to appear before this committee and for giving us this opportunity to tell you about Recruit U.S.A. We will be happy to answer any questions you might have. Thank you very much.

Mr. LANTOS. Well, let me begin your questioning, if I may.

Mr. IBANO. Yes, Mr. Chairman.

Mr. LANTOS. You indicated earlier that you were present at the hearing on July 23 and you listened to the testimony of your former employee, Mr. Schmidtberger; correct?

Mr. IBANO. Yes, sir.

Mr. LANTOS. Let me read part of his testimony to you and then ask you to comment specifically on some items.

Mr. IBANO. Yes, sir.

Mr. LANTOS. I am quoting from his testimony.

On several occasions I was myself ordered by my supervisor to screen applicants for certain positions on the basis of race and sex. . . . In the spring of 1988, Recruit U.S.A. performed a follow-up for IBM-Japan. Accordingly, IBM-Japan placed an ad-

vertisement in the Shushoku Joho and the resume forms were returned directly to Recruit U.S.A. for an initial screening.

Our instructions for the screening were communicated to us by our supervisors, Mr. Ureshino and Mr. Kamimura. We were explicitly instructed to invite only Asians—only Asians—to interview.

To prevent any misunderstanding, a memorandum entitled "IBM Project Confirmation," that was written in Japanese, was taped to the wall directly opposite my desk by my supervisor, Mr. Ureshino. That memorandum specified that IBM sought to hire approximately 25 people in the interview sessions.

Point one of that memo stated that applicants would only be considered if they were under 35 years old. Other job qualifications stated "foreigners were no good. . . ."

The specifics of the policy were outlined in the next sentence which read—still in Japanese—"white people, black people, no. But second generation Japanese or others of Asian descent, okay." This memorandum remained taped to the wall until July 13, 1988 when I removed it.

The instructions on that memo were followed and non-Asian applicants were screened out. They were sent letters explaining that the response to the advertisement had been overwhelming and that many qualified applicants could not be interviewed. This was not true. They were rejected because of their race and their race alone.

This was the testimony in part of Mr. Schmidtberger

How this happen? I mean, this is the most preposterous and outrageous policy of discrimination on the basis of race, on the basis of age, I presume also since we have heard from others on the basis of religion, ethnic background. How did this happen?

Mr. IBANO. Mr. Chairman, I will respond to that question. To tell the truth, when I saw that memo, I was very surprised and shocked. The memo is too stupid.

Mr. LANTOS. You didn't know that was the policy?

Mr. IBANO. No. Since ICI is a publishing company, we have strict guidelines not to violate any laws since we are distributing these magazines throughout the United States. We have told and we have advised our advertisers not to violate any American laws, especially the antidiscrimination laws, even if the jobs were in Japan with a Japanese company, where American laws do not apply. But we have strict guidelines, so——

Mr. LANTOS. Well, you know, I am unimpressed by the guidelines, and I will tell you why. Because testimony by some colleagues at the San Francisco hearing sounded like the Bill of Rights, but their practices were the exact opposite.

Paper is patient. You can put anything on a piece of paper. The problem is that if the practices are diametrically opposed to what you put on paper, we are dealing with practices which are discriminatory.

Now, is it your testimony under oath, and you are under oath——

Mr. IBANO. Yes.

Mr. LANTOS [continuing]. That you had no idea that discriminatory practices were employed in this operation? You had no idea?

Mr. IBANO. No idea. I have an idea about U.S. law and the U.S. antidiscrimination laws. I didn't know that this was bad, so as soon as I learned this happened, I was in New York and I flew to Los Angeles, and I asked our attorney to review all of the business practices, what happened in the Los Angeles office, and based on that review I fired that manager to whom Mr. Paul Schmidtberger reported within a month. That happened September 1988. After

that most of my time has been devoted to rectifying and remedying those situations. So, if you want to know the truth——

Mr. LANTOS. Well, what you are saying in your prepared statement I have difficulty believing. What you are saying in your prepared statement is that instructions of IBM-Japan were misinterpreted by Recruit's Los Angeles office manager.

Mr. IBANO. Yes, sir.

Mr. LANTOS. That is your sworn testimony.

Mr. IBANO. Yes.

Mr. LANTOS. Did you see those instructions?

Mr. IBANO. Yes.

Mr. LANTOS. You saw them?

Mr. IBANO. No. No. No. No, I am sorry, Mr. Chairman. I was told that the instructions from IBM-Japan were that the applicants must have the legal right to work in Japan in addition to the language——

Mr. LANTOS. Well, is there a Japanese law that prevents white people from working in Japan?

Mr. IBANO. No.

Mr. LANTOS. No. Is there a Japanese law that prevents black people from working in Japan?

Mr. IBANO. No.

Mr. LANTOS. Is there a Japanese law that prevents people over age 35 to work in Japan?

Mr. IBANO. No.

Mr. LANTOS. So complying with Japanese laws with respect to visa had nothing to do with these blatantly discriminatory provisions. So your testimony doesn't respond at all to the issue.

Let me help you again because I am very anxious that your testimony be accurate since you are under oath.

Mr. IBANO. Yes. The memo was not instructions from IBM-Japan.

Mr. LANTOS. I am sorry?

Mr. IBANO. It is not the instructions from IBM-Japan to do that.

Mr. LANTOS. It was not the instruction from IBM-Japan to do that. But your testimony says the LA manager misinterpreted IBM's instructions.

Mr. IBANO. Yes.

Mr. LANTOS. Were those instructions in Japanese?

Mr. IBANO. Yes, sir.

Mr. LANTOS. Do you have a copy of those instructions?

Mr. IBANO. Yes, I have here.

Mr. LANTOS. Will you please read those instructions to yourself, and I will take your word for it, and tell me whether those instructions are subject to misinterpretation?

Mr. IBANO. Yes. This says "IBM Projects Confirmation," April 4, 1988, at Tokyo, with the name of the list.

Mr. LANTOS. Yes.

Mr. IBANO. And No. 1, age. New graduate about up to 35 years.

Mr. LANTOS. Well, that is a clear case of age discrimination, is it not?

Mr. IBANO. In the United States it is, Mr. Chairman.

Mr. LANTOS. Well, you are operating in the United States.

Mr. IBANO. Yes. But these hirings were jobs in Japan with Japanese corporations.

Mr. LANTOS. But the process of finding these people, of screening them, of sending them on takes place by an American company, Japanese owned, in the United States; isn't that true?

Mr. IBANO. I'm sorry. May I ask Walter Cochran-Bond to respond to that issue because I am not familiar with the law in that area?

Mr. LANTOS. Will you identify yourself?

Mr. COCHRAN-BOND. Yes. I am Walter Cochran-Bond.

Mr. LANTOS. And who are you?

Mr. COCHRAN-BOND. I am an attorney with the law firm Proskauer, Rose, Goetz & Mendelsohn.

Mr. LANTOS. Yes. Were you sworn in when I swore in the witnesses?

Mr. COCHRAN-BOND. Yes, I was.

Mr. LANTOS. Go ahead.

Mr. COCHRAN-BOND. I'm not sure what question you are asking the witness right now. If it is an interpretation of how discrimination laws apply——

Mr. LANTOS. No. My question is much simpler than that. In the prepared testimony he says that the Los Angeles manager misinterpreted IBM's instructions.

Mr. COCHRAN-BOND. Correct.

Mr. LANTOS. All right. My question is, since he has the IBM instructions in front of him, are those subject to misinterpretation.

Mr. COCHRAN-BOND. Well, the instructions of or what you are referring to as instructions is a memo that was written by a manager at Recruit U.S.A.

Mr. LANTOS. Yes.

Mr. COCHRAN-BOND. It was not written by IBM-Japan. When he is referring to a misinterpretation, what he is referring to is the point below, which is the second bullet point under No. 3, which talks about IBM's localization policy.

As you can see, there is a mark on the side with a side comment. It is that side comment which says "white people, black people, no," as an interpretation over it. What we are referring to as misinterpretation is taking IBM's localization policy, which was a policy to emphasize hiring of people from the locality where they are doing business, in this case in Japan, and interpreting that as meaning that white people or black people should not be hired.

That was an editorial comment by the manager at Recruit U.S.A. It was an unfortunate comment and it gave rise to a fundamental change in the corporate policy with respect to——

Mr. LANTOS. Well, it was much more than an unfortunate comment. It was the policy on the basis of which hiring took place. It wasn't an aside like in a Moliere play. It wasn't that at all. It was pinned on the wall of the person who did the job, who was told no blacks and no whites can be hired. That wasn't a comment like "What a nice day?"

Mr. COCHRAN-BOND. Right. But the question you posed and we are trying to get to is what do you mean by a misinterpretation. The distinction here is what IBM's policy was, which was a localization policy very similar to what you are advocating the Japanese companies engage in in the United States. And that we are talking about here as the misinterpretation is what was done by a Recruit

U.S.A. manager at that time in prescreening applicants before they were sent to the advertiser. And it was that action——

Mr. LANTOS. Why are you insisting on using the term "misinterpretation." I mean, if the IBM memo said nothing about blacks and whites, this is not a misinterpretation.

Mr. COCHRAN-BOND. Well, it is a distinction between the policy that was IBM-Japan's policy and the interpretation put on that policy by a Recruit U.S.A. manager. That is what we are referring to as a misinterpretation.

Mr. LANTOS. I am not satisfied with the answer but I wish to move on.

Why did Recruit destroy evidence and records?

Mr. IBANO. Recruit did not destroy any evidence.

Mr. LANTOS. Is that——

Mr. IBANO. Interplace—I was told that Interplace was—did that kind of destruction, but I am not been sure. Because at the time that happened I was told in May or June 1989, at that time there was no corporate relationship with Recruit and Interplace, between Interplace

Mr. LANTOS. Well, if that is the case, why was it necessary for the Equal Employment Opportunity Commission to obtain a Federal court order requiring Recruit to stop destroying records and evidence?

Mr. IBANO. That was Interplace, not Recruit U.S.A.

Mr. LANTOS. Your predecessor agency. Was that your subsidiary?

Mr. IBANO. Interplace was a subsidiary, until October 1988, sir.

Mr. LANTOS. Did you have control over the operations of that subsidiary?

Mr. IBANO. Yes. Interplace under Recruit was a 100-percent subsidiary of Recruit U.S.A.

Mr. LANTOS. Well, if it was a subsidiary of your company, you were responsible for its operations, why were they destroying records and evidence?

Mr. IBANO. It happened after we sold that placement agency, sir.

Mr. LANTOS. Now, your former employee, Mr. Schmidtberger, testified that Transworld Recruit, which placed applicants in positions solely within the United States, not in Japan, used a coding system to identify job applicants by race, by sex, and by age, and coded personnel request forms were created to cater to the discriminatory wishes of the clients.

How did that coding system come about? Was that also just a misunderstanding?

Mr. IBANO. I am sorry, Mr. Chairman, I have no knowledge of that coding.

Mr. LANTOS. I am not asking whether you had knowledge or not. I am asking you to explain how in your company—it is not enough to say you didn't know about everything. That is not a satisfactory excuse. It is certainly not a satisfactory excuse in the Japanese culture where people take responsibility for the actions of their underlings. So don't give me that.

I am asking you how did the coding system come about?

Mr. IBANO. I am sorry. I don't know.

Mr. LANTOS. You never asked when you flew out and put an end to the practice?

Mr. IBANO. Yes. At the time I became aware of that fact I had no relationship with that company.

Mr. LANTOS. I am sorry?

Mr. IBANO. At the time I became aware of that coding, the facts of the coding, use of the coding system, the company had no relationship with Interplace.

Mr. LANTOS. I can't follow you. You flew out to Los Angeles, you say, and put an end to these practices. Is that your testimony, sir?

Mr. IBANO. When I flew to Los Angeles, that was August 1988. At that time the coding system wasn't being discussed.

Mr. LANTOS. When was the coding system discussed? The coding system which basically said no blacks, no Hispanics, when was that discussed?

Mr. IBANO. It was May 1989.

Mr. LANTOS. Excellent. Now, summarize for me that discussion. You said what and he said what.

Mr. IBANO. In August 1988 when I learned about some business practice in our Los Angeles office——

Mr. LANTOS. What do you mean "some business practice"?

Mr. IBANO. The memo.

Mr. LANTOS. The practice which said no blacks, no whites, nobody above 35?

Mr. IBANO. Yes.

Mr. LANTOS. Then what happened when you discovered that?

Mr. IBANO. When I discovered that I asked the attorney, the third party, to get into the Los Angeles office to review all of the practices there, and I asked him to report back to me. Based on that attorney review I immediately fired the managers, and after that I ordered a revision of the employment practices in Los Angeles office.

Mr. LANTOS. Well, was it your impression that your Los Angeles manager instituted these practices of blatant discrimination against blacks, against whites, against people over 35, whatever other category, on his own, or was he under the impression that he was doing the bidding of both his superiors and his clients?

Mr. IBANO. His own, sir.

Mr. LANTOS. This came entirely from him?

Mr. IBANO. His personal comments, sir.

Mr. LANTOS. No. I know these were his personal comments. But were these policies put in place in the knowledge that they reflect company policies or were they put in place in the knowledge that they are in violation of company policies?

Mr. IBANO. Sir, this is not the corporate policy and has never been.

Mr. LANTOS. So, your testimony under oath is that at all times you were under the assumption that no discriminatory practices of any kind against blacks, whites, Hispanics, women, people over 35 were ever employed in the business under your command?

Mr. IBANO. As far as I know, yes, sir.

Mr. LANTOS. You thought that blacks had just as much chance to be employed as anybody else?

Mr. IBANO. We are, we have the policy to——

Mr. LANTOS. I know you have written policies. The written policies are as good as the Bill of Rights. I am not talking about the written policies. I am talking about the reality.

Was it your impression during this whole period that there were no discriminatory practices employed in your Los Angeles office?

Mr. IBANO. No discriminatory practices. We have minorities and Americans and African-Americans.

Mr. LANTOS. This all came as a total shock to you?

Mr. IBANO. Yes, sir.

Mr. LANTOS. It came as a total shock to you.

Now, when it came as a total shock to you, did you reward Mr. Schmidtberger, who brought these discriminatory practices to your attention?

Mr. IBANO. When I meet with Mr. Paul Schmidtberger he was about to leave to go to law school. So he resigned shortly after we met each other.

Mr. LANTOS. Well, he was sick of these practices. He blew the whistle and he was sick of these practices. And he brought these practices to your attention, I take it?

Mr. IBANO. Yes, sir.

Mr. LANTOS. What did you tell him? Did you praise him for this action?

Mr. IBANO. Yes. I will consider about——

Mr. LANTOS. I am sorry?

Mr. IBANO. I will consider those points. Those are the words that I remember I said to him.

Mr. LANTOS. What did you do? Did you offer him a reward, a promotion, a pat on the back? What did you do?

Mr. IBANO. I'm sorry, sir?

Mr. LANTOS. Were you happy that he did this?

Mr. IBANO. No. I'm very surprised when I——

Mr. LANTOS. You were surprised. But were you happy or unhappy that these things came out?

Mr. IBANO. I was unhappy with——

Mr. LANTOS. You were very happy that these things came out?

Mr. IBANO. Yes. I was sorry we had did that.

Mr. LANTOS. And did you reward the employee who brought these things out?

Mr. IBANO. He said he is about to leave.

Mr. LANTOS. Yes. But you could have given him a big bonus, a severance bonus, for stopping you from continuing your illegal practices.

Mr. IBANO. I wrote a letter to him. I am willing to write a reference letter to anybody. But I didn't give any monetary reward.

Mr. LANTOS. I would like to call on the distinguished chairman of the full committee, Chairman Conyers, who honors us with his presence, to make whatever observation he would like to make and to raise any question with any witness.

Mr. CONYERS. Well, thank you very much, Chairman Lantos. I just wanted to be here as the chairman of Government Operations to commend you and congratulate you on this ongoing series of hearings on discriminatory employment practices of companies doing business in America. It is a very, very sensitive question, not

only in Detroit, MI, but among the members of the Congressional Black Caucus.

And I apologize for this interruption to the witness as well as to you.

Mr. LANTOS. A very welcome interruption.

Mr. CONYERS. We have a crime bill being marked up in the Judiciary Committee, and I just didn't want this hearing to go by without me personally intervening for a moment to indicate the cause for concern in this area because of racial attitudes, cultural differences that exist between the Japanese and our country. And I want to put it very firmly on the record, I am not one of those counted as a Japan basher. I am very sensitive to the cultures of other people and I don't want this to be denigrated into an economic rivalry or anything like it. We have very different cultures, and no one is more appreciative of that than myself.

But I talk to musicians and artists who travel now to Japan and things have been changing there, unfortunately. Where they were once welcomed with open arms, African-American artists, there are now restrictions even there.

Your inquiry about companies, Japanese companies inside the United States raises the other side of that question. We in the Congressional Black Caucus had to go to former Prime Minister Yoshuro Nakasone and the Finance Minister, Mishao Watanabe, because of repeated comments that were biased and denigrating to people of color in this country.

And so these are serious hearings exploring a serious misunderstanding on the part of Japanese entrepreneurs about what constitutes proper employment practice. For example, the idea of rigorous employment testing is one of the best traditions in Japanese commerce and industry, and yet in the American context these supposedly neutral practices may have a discriminatory effect on minorities and women and, in fact, violate Title VII of the Civil Rights Act.

And so I have looked at some of this testimony. I am going to review everything said here with extreme scrutiny. The Chairman of the Equal Employment Opportunity Commission has submitted studies showing the employment trends of foreign-owned companies, including those owned by Japanese entrepreneurs or investors, showing that African-Americans are employed in smaller numbers and that the Japanese company female work force is minuscule in comparison to other employment statistics. That in the upper ranks of officials and managers African-Americans did even worse, and women didn't fare too well either.

So this is an extremely sensitive hearing. I commend the way that you have conducted this. It is not a bashing expedition. The members of this subcommittee are proceeding in a way that adds importance and significance to employment attitudes in America which we are working on hard enough, goodness knows, where there are no foreign companies and investors. I mean we don't hold ourselves out as perfect on this subject by any means, but it is important that these hearings continue on. And, I know this is maybe the first of a series that you have planned, and I want you to know you have my full support and I will be in attendance at the future hearings of this kind.

Thank you very much for this intervention.

Mr. LANTOS. Thank you very much, Mr. Chairman. We are delighted you joined us.

Continuing the subject of Mr. Schmidtberger's testimony, according to him he left Recruit because he was deeply offended at what he was asked to do, and he was increasingly frustrated with his inability to convince his supervisors to change. Now, in meetings with Recruit and their attorneys he detailed his objections to these discriminatory practices, but it appears that Recruit's primary interest was in getting back from Mr. Schmidtberger all the incriminating documents and written communications that were in his possession.

Why was that?

Mr. IBANO. Mr. Chairman, I knew he was so frustrated when he raised those problems, so I flew from New York to Los Angeles. Because I was a branch manager of Recruit U.S.A. in New York, I was not responsible for day-to-day business in the Los Angeles office, so—but I felt it was necessary to go there to meet——

Mr. LANTOS. But you were responsible for the general tenor of that office as the supervisor. You were responsible for the policies of that office, were you not?

Mr. IBANO. Not in LA.

Mr. LANTOS. I am sorry?

Mr. IBANO. Not in Los Angeles.

Mr. LANTOS. Well, did Los Angeles report to you, or was Los Angeles an independent entity?

Mr. IBANO. No. It is a separate entity.

Mr. LANTOS. Was it under your jurisdiction?

Mr. IBANO. I was not the president at that time. I was the president from January 1989.

Mr. LANTOS. I am not talking about you personally. I am talking about the New York office. Did Los Angeles report to the New York office?

Mr. IBANO. No, sir.

Mr. LANTOS. It was totally independent?

Mr. IBANO. Independent, sir.

Mr. LANTOS. Well, then how did you have the right to go there and fire people and clean up their act if they were not under you?

Mr. IBANO. The president of Recruit U.S.A. was in the Los Angeles office. It is my understanding he had the responsibility to supervise the operations there.

Mr. LANTOS. I am not talking about day-to-day operations. I am talking about policies.

Mr. IBANO. It was never a company policy to discriminate against any person.

Mr. LANTOS. Well, if the top man was in Los Angeles, explain to me how you flew to Los Angeles to straighten out his office.

Mr. IBANO. I am sorry. Could you——

Mr. LANTOS. Yes. You are free to consult with your attorneys. I have no objections to that. But I will insist that you answer my question.

You just said that there was a president of Recruit in Los Angeles who was in charge.

Mr. IBANO. Yes.

Mr. LANTOS. OK. Now, if there were problems in his office and that he was in charge, then he should have cleaned up their act, not you, and you had no business flying to Los Angeles. You had no business firing people if he was in charge.

Mr. IBANO. It was independent, but I reported to the president and I know, soon as I knew that Mr. Paul Schmidtberger escalated his claim to the branch manager of the Los Angeles office to the president in Los Angeles, so I felt it my obligation to go there and to remedy and rectify the situation.

Mr. LANTOS. Well, it is not a question of your obligation. Were you responsible for the operation of that office? Were you above that office?

Mr. IBANO. I was responsible for the New York office.

Mr. LANTOS. You had nothing to do with Los Angeles?

Mr. IBANO. No, sir.

Mr. LANTOS. Nothing?

Mr. IBANO. No, sir.

Mr. LANTOS. But you had the right to fire people in Los Angeles?

Mr. IBANO. I am sorry, sir?

Mr. LANTOS. You had the right to fire people in the Los Angeles office?

Mr. IBANO. I asked, I asked the president for the termination of that manager. And after asking for the termination of that manager, I asked the board of directors to ask for the resignation of the president. And after that, I took over the presidency the next year.

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I wanted to explore the "what did you know and when did you know it" part of your testimony. You said that in August 1988 is when you found out about the screening practices, and upon finding out about it you put an immediate end to it. And yet you did not know about the coding system until later, until May 1989. And I am puzzled by that because it would seem that if you would find out in August 1988 that there was this shocking practice where potential employees would be screened in a discriminatory manner, did you not then ask what other potential problems might there be in these recruitment practices? Did you not ask, is there anything else that you are doing which might lend itself to discriminatory practices? Why did you know about the screening practices in August 1988 and yet not know about the coding system used by Interplace by May 1989? Why did you not know about it immediately? Was there not any thorough investigation on your part to find out what other coding or screening practices might be in place? What accounts for those months of not knowing another system that is discriminatory that was being used?

Mr. IBANO. Yes, ma'am. Those are two separate companies.

Ms. ROS-LEHTINEN. I realize that.

Mr. IBANO. So, when I learned the facts of the screenings——

Ms. ROS-LEHTINEN. One was Recruit and one was Interplace.

Mr. IBANO. Interplace. Yes.

Ms. ROS-LEHTINEN. Right.

Mr. IBANO. When I learned that screening problems in August 1988, Mr. Paul Schmidtberger only raised the problem in that area. He didn't mention anything about the coding system.

Ms. ROS-LEHTINEN. I guess what I want to get at is not really a witness' responsibility to say we did this and we did this and we did that, and, gee, unless that witness tells us then, golly, we just have no idea. I realize that the witness was not talking about your other company and was not talking about your other discriminatory practice. But I don't think that the responsibility is on a witness who might have seen or not seen that, but rather I think the responsibility is more accurately placed in your company.

And what I am puzzled at, if you know that something terrible is happening in your—and let me speak as a Congresswoman. If I know that my employees might be doing something wrong in the Miami office, then it will make me think, well, gee, I wonder if in our DC office we are doing that too, even though they are two different offices.

In this case you are talking about two different companies, and it just puzzles me that the screening practice was so blatantly discriminatory and so shocking in the way that it was done, I would imagine that it would have caused you great concern and you would have looked at other companies and other types of practices.

And I realize it wasn't brought to your immediate attention. I realize that. But I am wondering why you didn't do something to investigate other discriminatory hiring practices.

Mr. IBANO. Yes. We didn't have—I didn't have any responsibility about the Interplace because we sold that company in October 1988. So there was no corporate relationship between Recruit and Interplace after that.

So, if my answer is not enough, I am happy to ask Mr. Walter Cochran-Bond to answer about the Interplace issue, because this Interplace issue is still under investigation by the EEOC.

Ms. ROS-LEHTINEN. OK. In August 1988 you knew about a screening practices problem.

Mr. IBANO. Yes.

Ms. ROS-LEHTINEN. In August 1988 when you were still also with Interplace—correct? Because you said not until October 1988 did you sever that relationship?

Mr. IBANO. Yes.

Ms. ROS-LEHTINEN. In August 1988, could you show me any memo, any sort of communication that you might have put out saying to all of your companies, to all of these agencies, to all of your employees or with whom you have contracted, gee, this has just been brought to my attention. Do you practice any discriminatory—do you have any screening or coding practices or anything that would further violate employment laws?

In other words, in August 1988 one problem was brought to your attention. What did you do as proactive to make sure that nothing like that is taking place anywhere else?

Mr. IBANO. OK. I am sorry.

Ms. ROS-LEHTINEN. In August 1988 when you still had Recruit as well?

Mr. IBANO. Interplace

Ms. ROS-LEHTINEN. Interplace When you still had Interplace, in August 1988, what did you do to make sure that you would know everything else that was wrong?

Mr. IBANO. I didn't have the responsibility for that company, Interplace.

Mr. LANTOS. Are you suggesting that you had no responsibility when you owned it and you had no responsibility when you didn't own it? Is that what you are saying?

Ms. ROS-LEHTINEN. And the consent decree that you are talking about here is an agreement between the EEOC and ICI and Recruit and Interplace. I don't know when you owned it and when you didn't. But, if you are talking here about Interplace and a coding system that was used, obviously you had something to do with Interplace, because it is right here. If you have nothing to do with Interplace, then why mention it? I assume that if you are talking about Interplace that at some point in time you had something to do with Interplace, and before you let go of that company you were aware of some discriminatory practices. What proactive steps did you take to make sure that no discriminatory practices would be in place in any of the companies that you had anything to do with? Or did you just wait until someone said, "Look what is going on," and then you said, "Well, gee. Maybe we should do something about it"?

Mr. IBANO. As I told you, this is under the investigation by the EEOC. So may I ask Walter Cochran-Bond to answer instead of me, ma'am?

Ms. ROS-LEHTINEN. If he knows what you did. Otherwise, then he will say, "Gee, I don't know what you did."

Mr. COCHRAN-BOND. Yes, I am aware of what happened here and I think the distinction that is being missed is we are talking about two corporate entities. We are talking about Recruit U.S.A. and we are talking about Interplace.

Ms. ROS-LEHTINEN. I can hear that five more times if you want, but this is what I am going to say.

Mr. COCHRAN-BOND. And you are asking——

Ms. ROS-LEHTINEN. Sir, screening practices have to do with Recruit I am looking at this testimony. Coding system have to do with Interplace

Mr. COCHRAN-BOND. Correct.

Ms. ROS-LEHTINEN. OK. We have established that now for the third time.

Mr. COCHRAN-BOND. Right.

Ms. ROS-LEHTINEN. Go ahead.

Mr. COCHRAN-BOND. And what he has testified is that the investigation that he was engaged in in August 1988 went to the practices of Recruit U.S.A.

Ms. ROS-LEHTINEN. That is exactly what I am saying.

Mr. COCHRAN-BOND. You are asking why didn't he——

Ms. ROS-LEHTINEN. If you know something is wrong with one of your companies, with one, brand X, does it not—would a responsible corporate entity not say to itself, "What else is going on in any other company that I might have something to do with"?

Mr. COCHRAN-BOND. Well, it is easy to say with 20/20 hindsight at this hearing that maybe that is something that should have been done. The testimony is it was not done. The investigation was limited to practices at Recruit U.S.A., but they went beyond the

particular practice described by Mr. Schmidtberger and there was a complete revamping of the policies that affect that corporation.

Mr. LANTOS. Will my colleague yield for a second?

Ms. ROS-LEHTINEN. Yes, Mr. Chairman.

Mr. LANTOS. Were the two companies sharing offices?

Mr. COCHRAN-BOND. I believe they were in proximity to each other; yes.

Mr. LANTOS. What does that mean, in English?

Mr. COCHRAN-BOND. That means that they were on the same floor of the same building. But they were separate corporations——

Mr. LANTOS. Did they have the same entryway?

Mr. COCHRAN-BOND. I believe they did have the same entryway.

Mr. LANTOS. Same entryway. Might they have shared the same receptionist?

Mr. COCHRAN-BOND. I do not know.

Mr. LANTOS. You do not know. How many people were employed in Los Angeles by both of these entities at this time? Approximately.

Mr. COCHRAN-BOND. Nobody at the table here knows that.

Mr. LANTOS. Nobody at the table knows.

Did Interplace have 100 employees or more?

Mr. IBANO. No, I don't think so.

Mr. LANTOS. Did it have 20 employees or more?

Mr. IBANO. I don't know. Maybe 20 to 30.

Mr. LANTOS. And how many did Recruit have in Los Angeles at the time? About?

Mr. IBANO. About, I think less than 10 people there.

Mr. LANTOS. Less than 10 people.

Mr. IBANO. So altogether we are talking about a small office of 25 to 35 people.

Mr. LANTOS. Was there dialog among the employees of these two entities?

Mr. IBANO. Sir, since I was in New York——

Mr. LANTOS. I am not asking "you." You know, don't personalize this. We are talking about a corporate violation. We are talking about corporate policies which are obnoxious, revolting and discriminatory. So don't constantly defend yourself.

Did these people of these two Japanese-owned companies talk to each other?

Mr. IBANO. I don't know, sir.

Mr. LANTOS. You don't know. Were they in the same office?

Mr. IBANO. I think they resided, you know, they located in the separate office.

Mr. LANTOS. On the same floor?

Mr. IBANO. Separate rooms. Even if they——

Mr. LANTOS. Separate rooms.

Mr. IBANO. Yes.

Mr. LANTOS. Were these rooms locked or were the doors open?

Mr. IBANO. I don't know.

Mr. LANTOS. I don't know.

Well, the impression the subcommittee is getting and the irritation the subcommittee is expressing is your attempt to hide behind a corporate structure which doesn't deal with the issues that we are probing at all.

I thank my colleague.

Ms. ROS-LEHTINEN. Thank you. So, in summary, then when you were made aware of the screening practices by Recruit U.S.A., that were done by Recruit U.S.A. in August 1988, you did not inquire as to other discriminatory practices which might have been in place in any other company that you have?

Mr. IBANO. Correct.

Ms. ROS-LEHTINEN. In other words, there could have been, perhaps, even an entry fee system where you charged so much dollars for a black or a Hispanic or a woman, and, gee, unless some witness testifies about that system, you would not have known? In other words, you did nothing proactively to ask about other discriminatory practices in any of your other companies?

There is no screening or coding system in place now, you say, for any of these companies? There is no code for language, for race, for nationality?

Mr. IBANO. No coding system at Recruit U.S.A. No screening now; and I am sure, since it is a separate company, no coding system, I believe; and no discriminatory practices. Recruit U.S.A. has fully complied with American law and especially the employment law.

Ms. ROS-LEHTINEN. Now, getting back to that memo from IBM-Japan where you had referred to localization. I think that was the phrase that was used. And it seems that your version of the story is that the local manager interpreted that memo to be reading as no blacks, no women, no Hispanics, no one over 35. What is it that you mean by localization? What does that memo say that it would lend itself to that misinterpretation?

Mr. IBANO. This is not a memo from IBM-Japan This memo was written by one manager of Recruit U.S.A.'s Los Angeles office. And I reviewed that document, this memo, and these notes indicate that IBM-Japan had a localization policy, which means that it preferred to hire persons from the local country in which it did business.

Ms. ROS-LEHTINEN. OK. Now I think that we referred to a memo from IBM-Japan; correct?

Mr. IBANO. No.

Ms. ROS-LEHTINEN. No?

Mr. IBANO. No, ma'am.

Ms. ROS-LEHTINEN. There was no memo from IBM-Japan. What is it about the localization issue that you are discussing? What localization? You preferred to hire people who were familiar with the locale, that means that are Japanese or speak Japanese. I don't understand what localization means.

Mr. IBANO. Honestly speaking, I don't know about that, you know, particular companies' internal policy. But this memo says, this memo was written by Recruit U.S.A.'s Los Angeles manager and this is maybe his misinterpretation. It says in the parenthesis "IBM's current rule and policy" and it says "IBM's localization."

Ms. ROS-LEHTINEN. What was that again? Could you repeat that?

Mr. IBANO. It says "IBM's localization policy." I am not sure if the interpretation is correct or not. And because of that "foreigners are no good," it says.

Mr. COCHRAN-BOND. If it might help, what he is referring to is the second bullet under No. 3 on the memo there is a phrase in

parentheses there, and it is that phrase right there that refers to a localization policy.

Ms. ROS-LEHTINEN. OK. This consent decree between the EEOC and the ICI, ICI was ordered by the EEOC to hold seminars and that was because ICI was found to be in violation of what? And what is your interpretation of the type of punishment by EEOC? Do you consider it as punishment or a way of helping you improve your business dealings?

Mr. IBANO. The consent decree requires ICI to sponsor two seminars in Japan to educate the Japanese executives and managers.

Ms. ROS-LEHTINEN. Why did the EEOC do this? As a result of what?

Mr. IBANO. May I ask Walter Cochran-Bond because he represented us in the negotiations with the EEOC especially about this consent decree? May I?

Mr. LANTOS. We will hear your explanation after the committee goes and casts a vote. We have a live vote.

The subcommittee will be in recess for 10 minutes.

[Recess taken.]

Mr. LANTOS. The subcommittee will resume.

Your associate had a comment. I think that was the last thing.

Mr. COCHRAN-BOND. Yes. I believe when we broke a question was asked about the portion of the consent decree that was entered into between the EEOC and International Career Information, Inc.

Mr. LANTOS. Yes.

Mr. COCHRAN-BOND. And the provision in that consent decree for training seminars.

This was a proposal that was raised very early in negotiations by the EEOC. It was my understanding that the EEOC raised this particular provision for a consent decree because they wanted to do something more than deal with the individual cases of discrimination that it felt it was pursuing in this case. It was looking for a way to do some affirmative action to avoid potential future discrimination. It saw ICI as an information company, which it is. It saw Recruit as a company that has an expertise in the employment area. So it asked us to sponsor two seminars in Japan for Japanese executives or managers, to inform them of equal employment opportunity laws in the United States, with the hope that this would be a beneficial educational experience and a way to inform Japanese managers about the laws that they attempt to enforce in the United States.

Mr. LANTOS. Congressman Shays.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. Ibano, I appreciate you being here. I would think it would be somewhat difficult to respond to a lot of questions that are very sensitive and not in your native tongue. I appreciate your ability to keep up with us. The last thing I want to do is put you in a position where you may cite something, particularly since you're under oath, that with hindsight you may not feel is precise as you want it to be.

I just would like to start with the testimony we received from Paul Schmidtburger, and that's really one of the reasons why you're here, a former employee who has been discussed. It was in

ur first hearing, and now this is our third hearing. I'm just going o read three paragraphs.

I worked for Recruit U.S.A. from November, 1987 to August, 1988. Recruit J.S.A.'s primary function was to locate Japanese-English bilingual job applicants or positions in Japan. Those positions were with both Japanese companies and American companies in Japan.

A second corporation called Transworld Recruit shared office space with Recruit J.S.A. and placed applicants in positions solely within the United States. At Recruit communicated with my supervisors and coworkers almost exclusively in Japanese. just would make reference to the fact that Transworld Recruit shared office space vith Recruit U.S.A.

The first discriminatory practice concerns a coding system that Transworld Recruit used to identify job applicants by race, sex and age. When prospective employers requested applicants or temporary employees of a specific race, sex or age, Transworld Recruit used a code system to communicate those requests within the office and/or written personnel request forms." It's a fairly simple process of the coding that I don't need to get into, other than to say it said "Talk to Adam" or "Meet with Adam," and if a woman were to be hired, the code word would read "Talk to Eve."

This is the last paragraph. Then he said:

The second discriminatory practice concerns applicant screening within Recruit U.S.A., my own division. On several occasions I was myself ordered by my supervisor to screen applicants for certain positions on the basis of their race and sex.

Now, in this country, it would be and is illegal to discriminate based on race, religion, sex, and national origin or even age. It is my understanding in Japan there are no such restrictions, that you could decide to hire someone in Japan for a Japanese company.

If you were in Japan hiring for a company in Japan, would you be allowed to discriminate based on race, religion, sex, national origin or age?

Mr. IBANO. I'm sorry, sir. As I stated in my statement, I have had no experience working in Japan for a Japanese company. The only company I worked for was a subsidiary of an American company.

Mr. SHAYS. I understand that. Are you an American citizen or a Japanese citizen?

Mr. IBANO. I'm a Japanese citizen.

Mr. SHAYS. I think most Americans know our own law, so I'm going to ask you as a citizen of Japan. Are you allowed to discriminate based on race, religion, sex, national origin or age?

Mr. IBANO. In general, to the best of my knowledge, I don't think there's that kind of discrimination in Japan.

Mr. SHAYS. No, that's not the question I asked, sir. I'm not going to be very difficult on you. I've got a few questions, and I think we have other people to ask questions. But what I'm asking is—and I think in the end I'm just going to be making a point with this—you're a Japanese citizen and you're in Japan, are you protected from discrimination based on race, religion, sex, national origin or age? Are there discrimination laws that would prevent this kind of discrimination?

Mr. IBANO. I'm sorry, I'm not competent to answer that. In general, to the best of my knowledge, somewhere in the constitution there is that kind of statement, that people shouldn't be discriminated by such kind of categories.

Mr. SHAYS. I'm just going to have to say we're not starting off on a good track because, being a Japanese citizen, you are someone

who is involved in recruiting. It would seem to me that you would know this, even if second hand you would know it.

It seems to me the issue we're having to deal with is, in Japan, there can be discrimination—in fact, there is—and it's not illegal. The question we have is—in fact, I think there's even a Supreme Court case that says if an American is working for a United States firm in Japan, he is not protected by the laws that we have in the United States against discrimination and can, in fact, be discriminated against by even an American company in Japan, and that the American company is not inhibited by our own laws here.

Now, what makes your circumstance different is that you work in this country and your company comes under our laws, even if you are, in fact, hiring for overseas. Therefore, you and your company are not allowed to discriminate on any of these categories.

It seems to me that the challenge for your company, or any company, is not giving in to a company in Japan that feels since they don't have this restriction in Japan, they're going to ask you to find an American to work there, but maybe not a woman or a black. That's totally illegal.

The question I want to ask you—how many years have you now worked for Recruit U.S.A.?

Mr. IBANO. Five years, sir.

Mr. SHAYS. This is not to build drama but just to remind you that what I'm asking is very serious. I know you're under oath. Has your company discriminated in the process of hiring? Besides this circumstance, which you say was a misinterpretation of what IBM had asked for, with this particular application process in which it basically said, "White people, black people no," and then it said "But second generation Japanese-Americans, Asians, okay."

Aside from this experience, and aside from Recruit's willingness to go along, because, in fact, it did go along with this process, has your company been asked by either American or Japanese companies in Japan to discriminate in the process of hiring? Not whether you agreed to it, but whether you were asked to do it.

Mr. IBANO. Generally, it is my understanding in Japan it is not illegal to ask for age and race, sex, but it is general knowledge. In our case I think we have strict guidelines not to violate any American law, especially the employment law. We have had guidelines from the very beginning, from 1985.

Mr. SHAYS. This is a grand experiment that we have in this country. We have gone back only a few years ago and we did not have these laws. There was very obvious discrimination. We don't have discrimination to the same extent. We, in fact, are legislating morality and in large measure succeeding. But the question I was really asking you, though, was not whether—because you've now answered my question that I asked earlier, this last answer—but what I'm asking you is, have you been asked by Japanese companies in Japan, or American companies in Japan, to discriminate either based on religion, sex, national origin, race or age?

Mr. IBANO. No, sir.

Mr. SHAYS. So you've never been asked to do that?

Mr. IBANO. No, sir.

Mr. SHAYS. Let me just ask you, are you clear on what my question was?

Mr. IBANO. Yes.

Mr. SHAYS. Why don't you say, rather than "no, sir," why don't you just explain it in a full sentence so that I'm clear you understand.

Mr. IBANO. Yes, I understand.

Mr. SHAYS. No, I don't mean it that way. [Laughter.]

I want to know what that "no" applies to. Is it no, you have never been asked by any U.S. company? I want you to say that, if you would, if that's the case. I just don't want to look back at the transcript later and someone say he didn't understand what "no" and "yes" was applying to.

Mr. IBANO. Yes, I will try to do that.

Mr. SHAYS. Thank you. Would you do it now? Describe to me the question. Well, this is a communication problem we're having now. It's my fault and not your fault.

What I'm asking you to do is to—you have made a statement that I, frankly, have a hard time believing, because it is not illegal in Japan to discriminate. So it would not surprise me that a Japanese firm would ask you to discriminate in hiring someone in Japan. It wouldn't surprise me. It would concern me if an American company did that more, because they know it is clearly wrong in this country to do that.

But what you have said to me, I think, is that your company, to your knowledge, other than this so-called miscommunication with IBM, to the best of your knowledge you have never had an American company overseas, or a Japanese company in Japan, ask you to discriminate or ask you to take note of the person's age, or not hire a black or not hire someone older. And you said yes, that's correct, I've never had that happen.

I want you to say it in a full sentence what you've never had happen.

Mr. IBANO. Since I'm the president of this company——

Mr. SHAYS. Since 1989.

Mr. IBANO [continuing]. From January 1989, we have had strict guidelines for our advertisers not to violate any American law, especially the employment law, and also I'm not involved in the day-to-day operations of that publication nor the call from our advertisers. If that case happened, our employees should tell them not to——

Mr. SHAYS. I understand that. That's why I'm happy I've asked this question. I understand that this is your policy, and I accept—because there's no evidence to the contrary—that you do not discriminate, that this is a thing of the past. I accept that because there's no testimony that I'm aware of that would contradict that, though this is pretty shocking, as I think you would agree, based on our own law.

What I'm asking you, though—and as president of the company, I assume you get involved in the company and you're aware of requests that are made of your company. I asked the question have you ever been requested to discriminate, not whether you agree to do it—that's a different issue. I'll come to that later. That was going to be my next question. But you're telling me you weren't.

Mr. IBANO. To my best knowledge, I think I haven't had any such orders from the advertiser.

Mr. SHAYS. You've never had anyone make a request to you to hire based on age, based on race, since 1989? You're not aware of your company ever having that request? Is that true?

Mr. IBANO. Yes, it is true.

Mr. SHAYS. OK. And you're aware of the question I'm asking here?

Mr. IBANO. Yes.

Mr. SHAYS. Let me just end by this last question. When I read Paul Schmidtburger's statement, he said "A second corporation called Transworld Recruit shared office space with Recruit U.S.A. and placed applicants in positions solely within the United States." My sense is that sharing office space is not necessarily being on the same office floor. To me, it implies administrative sharing of maybe computers, maybe the sharing of desks sometimes, maybe sharing the phones.

Did, in fact, that kind of sharing take place? This is not a trick question but it's one you had better answer accurately.

Mr. IBANO. Again, since I was in New York, I am not familiar——

Mr. SHAYS. No, no. The reason why that doesn't wash is that you had your company, Recruit U.S.A., also located in California as well. So that doesn't wash with me. I guess I should let you finish, but I would prefer you to—please finish.

Mr. IBANO. Yes, I knew that they shared office and they shared the receptionist, but I don't know farther than that, whether they shared the computers or the administration. I don't know, sir.

Mr. SHAYS. We have other witnesses, but given that, it's just very hard for me to appreciate that you did not have any control over their operations. I thank you for being here.

I would tell you that I'm convinced that this committee will continue to pursue this. I have to believe there's going to be major changes in the way Japanese companies view their responsibilities in this country.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much.

We will now hear from Mr. Keiji Matsushima, president of DCA Advertising. Mr. Matsushima, we are pleased to have you. Your very lengthy prepared statement will be entered in the record in its entirety. I would very much appreciate it if you could briefly summarize your statement so we can get to our questions.

STATEMENT OF KEIJI MATSUSHIMA, PRESIDENT, DCA ADVERTISING, INC., ACCOMPANIED BY C. RAY FREEMAN, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER

Mr. MATSUSHIMA. Good afternoon, Mr. Chairman, and members of the subcommittee.

Mr. LANTOS. Would you bring the mike close to you.

Mr. MATSUSHIMA. On behalf of DCA Advertising, I welcome this opportunity to testify before the Employment and Housing Subcommittee on the very important subject of employment practices and policies of Japanese companies operating in the United States.

I wish to advise the subcommittee that I have brought a translator to assist me if the need arises——

Mr. LANTOS. Very good.

Mr. MATSUSHIMA [continuing]. In responding to the subcommittee's questions, in order to assure that my testimony is not hindered by language barriers.

At the outset, I should inform the subcommittee that I have been in my present position only since August of this year. Prior to that time, I was employed by Dentsu in Tokyo, Japan. With me at this hearing today is Mr. C. Ray Freeman, executive vice president and chief operating officer of DCA. Mr. Freeman is familiar with the circumstances surrounding a September 6——

Mr. LANTOS. Forgive me for interrupting you, but are you planning to read all 14 pages, because my request——

Mr. MATSUSHIMA. No, no, just a few——

Mr. LANTOS. Just a summary.

Mr. MATSUSHIMA. Yes.

Mr. LANTOS. OK.

Mr. MATSUSHIMA. So bear with me.

A September 6, 1990, work force reduction at DCA. Because I have only limited personal knowledge about this, and many of the other issues of concern to the subcommittee, Mr. Freeman will be present to enable me to respond as fully as possible to the subcommittee's inquiries and to answer any questions the subcommittee may wish to pose to him.

Without attempting to reiterate my written statement, I would like to highlight the following points. First, as is demonstrated by the data we have provided to the subcommittee, the majority of DCA's top management is American. Specifically, two of DCA's three executive vice presidents are Americans. All of DCA's five senior vice presidents are Americans. DCA also has six American vice presidents, and DCA also employs Americans in numerous other positions at all levels of the agency.

We believe we have been very successful in integrating American employees into senior executive positions at DCA. However, like many companies in the United States and worldwide, we recognize that we need to continue to work diligently toward integrating more women into the senior executive ranks. We believe the need to do so is recognized today in virtually all industries and professions.

Second, DCA's practices and policies are fully consistent with all applicable laws and are set forth in the employee manual, a copy of which is given to each employee.

Third, DCA's hiring, promotion, and other employment decisions are made without regard to race, sex, national origin or other factors prohibited by applicable law.

Fourth, DCA, like many overseas subsidiaries of American and foreign companies, employs some staff from its parent company, although these individuals are employees of DCA while they are working in the United States. As the data we have provided to the subcommittee demonstrates, those individuals are "expatriate executives" and make up a very small percentage of our overall staff. Specifically, there are currently 10 expatriate executives at DCA, or 8 percent of DCA's total of 124 employees.

Finally——

Mr. LANTOS. What percentage are Japanese of your executive level employees?

Mr. MATSUSHIMA. Excuse me, sir?

Mr. LANTOS. You say that 8 percent of your employees are Japanese citizens.

Mr. MATSUSHIMA. I would say just 8 percent are expatriate executives, which are sent from Dentsu.

Mr. LANTOS. That's correct. What percentage do they represent of your executive managerial level employees?

Mr. MATSUSHIMA. Excuse me.

[Mr. Matsushima conferring with Mr. Freeman.]

Mr. LANTOS. You have a total number of employees of 124. How many of those do you consider top level employees, executive level employees?

Mr. MATSUSHIMA. Executive level employees at 40 percent.

Mr. LANTOS. Forty percent is just not very realistic. There is no company that has 40 percent executive level employees.

Of the top 10 employees, how many are Japanese?

Mr. MATSUSHIMA. The top 10—I would say 8 officers, and 3 out of the 8 are Japanese. Five are Americans.

Mr. LANTOS. And the next layer?

Mr. MATSUSHIMA. Next, there are 14 executive levels, and I would say 8 of the 14 are Americans and 6 are Japanese—I mean, 40 percent are Japanese.

Mr. LANTOS. So what your figures show is that, overall, the Japanese employment is 8 percent, but at the top level it is almost half.

Please go ahead.

Mr. MATSUSHIMA. I would like to explain about that.

Expatriates means they are sent from Dentsu and that they are not always occupied at the top level. They are sometimes at the supervisory level.

I would like to finish my statement, if you don't mind.

Mr. LANTOS. Please.

Mr. MATSUSHIMA. Finally, as is detailed in my written statement, DCA's September 1990 work force reduction was undertaken for legitimate, nondiscriminatory, and business reasons. This work force reduction was planned and implemented by senior American management, including American department heads of DCA.

The very fact that DCA has so many American executives, and that these American executives initially selected the employees who would be discharged in the work force reduction, belies any claim that the employees were discharged because of their national origin.

In closing my brief oral remarks, let me state again that DCA is committed to equal employment opportunity. We are proud of our progress to date in achieving a diversified American staff. We will continue our efforts to do so.

Thank you very much.

[The prepared statement of Mr. Matsushima follows:]

WRITTEN STATEMENT BY

KEIJI MATSUSHIMA

PRESIDENT AND CHIEF EXECUTIVE OFFICER

DCA ADVERTISING INC.

Before the

EMPLOYMENT AND HOUSING SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

U.S. HOUSE OF REPRESENTATIVES

SUBMITTED SEPTEMBER 19, 1991

My name is Keiji Matsushima. I am President and Chief Executive Officer of DCA Advertising Inc. ("DCA").

At the outset, I should inform the Subcommittee that I have been in my present position only since August of this year. Prior to that time, I was employed by Dentsu Inc. in Tokyo, Japan.

I am joined at the Subcommittee hearing today by C. Ray Freeman, Executive Vice President and Chief Operating Officer of DCA. Mr. Freeman is familiar with the circumstances surrounding a September 6, 1990 workforce reduction at DCA, to which I will refer later in my testimony.

On behalf of DCA, I welcome this opportunity to testify before the Employment and Housing Subcommittee on the very important subject of the employment practices and policies of Japanese companies operating in the United States.

In a letter dated July 10, 1991 and addressed to my predecessor, Mr. Toshio Naito, Subcommittee Chairman Tom Lantos asked DCA to address three primary issues. They are:

1. "The nationalities and gender of [DCA's] personnel in the United States, broken down according to major occupational categories, such as clerical, supervisory, etc.".

2. "The number of Japanese nationals employed by [DCA's] parent company in Japan who are working in [DCA's] United States operations, on average, at any one time, and how long their tenure is in this country."

3. "[DCA's] policies pertaining to promotions and permanence of employment as they relate to American and Japanese employees."

In a letter dated July 26, 1991 addressed to me, Subcommittee Chairman Lantos asked DCA to address a fourth issue, as follows:

4. "[P]lease provide the number of individuals in officer and executive positions, identified by gender and nationality."

Before specifically addressing these issues, I would like to describe briefly DCA's history and employment policies and practices in general.

BACKGROUND: DCA ADVERTISING INC.

DCA Advertising Inc. is a wholly-owned subsidiary of Dentsu Inc., which is headquartered in Tokyo, Japan. Dentsu Inc. ("Dentsu") is an international advertising agency and communications corporation.

DCA Advertising Inc. is an advertising agency that was incorporated in the United States in late 1986. DCA's main office is in New York, New York. DCA also has a small office in Los Angeles, California. DCA currently has 124 employees, the vast majority of whom are located in its New York City office.

Since its inception, it has been the goal of DCA to hire qualified local (hereinafter referred to as "American") staff whenever possible, and to promote qualified staff members

to fill higher level vacancies as they occur. We believe it is significant in this regard that the majority of DCA's top management is American. For example, two of DCA's three Executive Vice Presidents are Americans. Specifically, DCA's Executive Vice President and Chief Operating Officer is an American; as is DCA's Executive Vice President, Chief Financial and Administrative Officer (who is also a member of DCA's Board of Directors). In addition, all of DCA's five Senior Vice Presidents are American. Three of these Senior Vice Presidents also head DCA's three major departments (Account Services, Creative, and Media); the fourth is the General Manager of DCA's Los Angeles office; and the fifth is head of Market Research and Planning for DCA. DCA also has six Vice Presidents who are Americans. In addition, DCA employs Americans in numerous other positions at all levels of the agency. This information responds generally to questions 1 and 4 asked by the Subcommittee. A more detailed response to those questions is provided later in my testimony, and in Exhibit A to this statement.

JAPANESE NATIONALS WORKING AT DCA

The second question the Subcommittee has asked DCA is to provide "[t]he number of Japanese nationals employed by [DCA's] parent company in Japan who are working in [DCA's] United States operations, on average, at any one time, and how long their tenure is in this country."

On occasion, DCA has requested its parent company, Dentsu Inc., to send a Dentsu executive to work for a period of time at DCA, to perform key functions in connection with DCA's business. DCA refers to these individuals (who become DCA employees while they are working in the United States) as "expatriate executives". Consistent with DCA's goal of hiring qualified local staff, the percentage of such Japanese "expatriate" executives has remained low. Specifically, there are currently 10 Japanese "expatriate" executives at DCA (or 8% of DCA's total staff); and this number has remained virtually constant throughout DCA's history. The average length of stay of such "expatriate" executives in the United States is approximately three to four years.

We note in this regard that it is a common practice for American corporations to send certain of their key executives to work in the overseas subsidiaries of such American corporations; just as it is customary for many foreign companies to send some of their key executives to work in their United States subsidiaries. We believe that most such corporations, whether American or foreign, have followed this practice because they have a legitimate need for certain experienced executive personnel from the parent company to work in their overseas subsidiaries, in order to represent the parent's interests; facilitate communication with the parent; and perform key functions for which they have particular expertise.

In our case, the "expatriate executives" who work at DCA bring with them a familiarity with Dentsu's organization, operations, and way of doing business; and transmit Dentsu's commitment to and interpretation of "communications excellence" (which is Dentsu's slogan). Because DCA is an independent corporation whose operations are conducted separately from Dentsu's, there is only a small number of "expatriate executives" at DCA. However, DCA's autonomy makes it even more important than might be the case in other corporations that there be at DCA a small group of experienced, key executives supplied by Dentsu who are familiar with Dentsu and who can keep the interests of DCA's sole shareholder, Dentsu, at heart.

DCA'S WORKFORCE STATISTICS

Exhibit A to this submission sets forth, in response to the Subcommittee's first request, the nationalities and gender of DCA's personnel in the United States, broken down according to major occupational categories.

As is set forth in more detail in Exhibit A, DCA currently employs 124 persons. Of those 124, 91 (or 73.4%) are Americans;[1] 13 (or 10.5%) are of Chinese, Indian, or Hispanic national origin; and the remaining 20 (or 16.1%) are of Japanese

[1] With the exception of documentation required by law for resident aliens and Japanese nationals working in the United States pursuant to visas, and other information collected pursuant to the immigration laws, DCA does not maintain records regarding employees' national origin. Therefore, information provided in this written statement regarding national origin is in many cases based on DCA's "best guess" as to employees' national origin.

national origin (10 of these 20 are "expatriate executives"). DCA's 91 American employees fall into the following general occupational categories: 22 clerical employees; 34 professional employees; 22 supervisory/managerial employees; 8 executives; and 5 officers.

Exhibit A to this submission also sets forth, in response to the Subcommittee's fourth request, the number of individuals employed by DCA in officer and executive positions, identified by gender and nationality. As is set forth in further detail in Exhibit A, DCA's staff includes 8 officers[2] and 15 executives who are not elected officers. Of these 8 officers, 5 are Americans; and 3 are Japanese (all of these 3 are "expatriate executives"). Of DCA's 15 non-officer executives, 8 are Americans; and 7 are Japanese (4 of those 7 are "expatriate executives"). One of these 7 Japanese executives is a female.

We believe we have been very successful in integrating American employees into senior level executive positions at DCA. However, like many companies in the United States and worldwide, we recognize that we need to continue to work diligently toward integrating more women into the senior executive ranks. We believe that the goal of increasing the representation of women in senior-level positions is recognized as desirable and necessary today in virtually all industries and professions, including advertising.

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[2] "Officers", as used here, means elected officers of DCA.

EMPLOYMENT POLICIES AND PROCEDURES

We respond below to the Subcommittee's third question, regarding DCA's "policies pertaining to promotions and permanence of employment as they relate to American and Japanese employees."

From its creation, it has been the policy of DCA to make all employment decisions (including those relating to hiring, promotion, training, and other terms and conditions of employment) without regard to a person's race, color, national origin, sex, age, disability, religion, marital status, or sexual preference, based on qualifications to perform the required work. In this regard, DCA's Employee Manual (a copy of which is distributed to all employees) states:

"EQUAL EMPLOYMENT OPPORTUNITY

> It is our firm belief that all qualified persons regardless of race, color, religion, sex, national origin, marital status, sexual preference, age, or disability are entitled to equal employment opportunity. At DCA Advertising this commitment applies to all job related decisions including recruiting, hiring, training, promotions, and other terms and conditions of employment as well as all other personnel actions and programs.
>
> We believe our employees have a right to enjoy a work environment free of discrimination, including sexual harassment in any of its forms.
>
> Any alleged violation of the above policy should be reported immediately to the Personnel Manager where an investigation of the circumstances will be conducted."

DCA scrupulously adheres to this policy and unequivocally denies that it has ever discriminated against any U.S. employee.

As an American company, DCA recognizes its obligation to comply with applicable United States laws. DCA's "expatriate" executives, as guests in the United States, also understand that they are individually obliged to adhere to local laws, and are committed to doing so. In sum, DCA takes seriously its commitment to observe applicable laws, and to conduct its operations as a good "corporate citizen."

Our belief in the concept of "equal employment opportunity" stems not only from the desire to follow the law, but also from the overriding conviction that equal employment opportunity makes good business sense. In order to be effective in the advertising industry, we think that any advertising agency must strive to hire and promote the best-qualified persons available for agency jobs. DCA has made a substantial investment in the United States and has created jobs here, up to and including senior executive jobs. We believe that the only way DCA or any other company can be successful in the United States is by seeking the best-qualified workforce, consistent with relevant laws.

The Subcommittee has also asked about DCA's policies concerning "permanence of employment." Like most employers in the United States today, DCA has an "employment at will" policy; and it is not DCA policy to guarantee continued employment. DCA's written policies expressly disavow any such representation or understanding.

To the extent that Dentsu Inc. chooses to release one of its employees for overseas assignment, it is reasonable to determine the projected length of such an individual's overseas assignment in advance. This is not a matter of preferential treatment, but simply reflects the reality that it is not cost-effective or practical to relocate an executive overseas for only a short or unknown period of time. However, the jobs of "expatriate" executives at DCA, like those of DCA's American staff, are not "guaranteed". "Expatriate" executives also know that their stay at DCA will be of limited duration.

"Expatriate" executives are compensated in accordance with an expatriate compensation formula. Again, this does not reflect preferential treatment, but rather is designed to compensate these persons for the added expenses of relocating overseas. Indeed, we understand that it is a common practice for American companies as well to provide an "expatriate compensation package" for their employees who are sent on overseas assignment.

SEPTEMBER 1990 WORKFORCE REDUCTION AT DCA

On September 6, 1990, DCA had a workforce reduction. This DCA-wide reduction in force was undertaken for legitimate, non-discriminatory, and business-related reasons. Specifically, the workforce reduction was attributable to a number of factors. First, it had become apparent that the sluggish economy in the United States was eroding advertising expenditures, and thus advertising agency growth. DCA faced reduced client advertising expenditures, and also faced a substantial projected operating

loss for its fiscal year 1990 (April 1, 1990 through March 31, 1991). As a result, DCA management concluded that DCA had to undertake a detailed analysis of profits derived from serving particular clients and staffing needs. DCA management further concluded that DCA had to consider restructuring its operations in an effort to bring DCA's expenses in line with its income from clients.

In the ensuing workforce reduction, a total of 23 employees were discharged; and two independent contractors were notified of the termination of their services. Although most of the employees who were discharged were Americans, this was consistent with the fact that the vast majority of DCA's employees were (and still are) Americans. We also believe it bears mention that two other DCA employees (who were Japanese) resigned from DCA's employ shortly before the workforce reduction. The positions of these individuals were counted toward the cost savings to be effected by the staff reduction. Therefore, the total number of positions held by Japanese employees that were affected by this workforce reduction was actually 3 -- or 11% of the total number of positions that were affected. Given the overwhelming percentage of DCA employees who are American, this is not an insignificant figure.

It is also noteworthy that this workforce reduction was planned and implemented by senior American management (including American department heads) of DCA. The very fact that DCA has so many American executives -- and that these American executives

initially selected the employees who would be discharged in the workforce reduction from among the employees in the departments they headed -- belies any claim that employees were discharged because of their national origin.

The selection decisions were made based on a number of factors. These factors included, among others, particular employees' performance (in some cases); decisions to eliminate certain functions; and decisions concerning how many employees and which positions would be needed in order to continue to service clients effectively, while reducing DCA's staffing to an overall level that could be economically supported by DCA's current level of client income.

It also bears emphasis that -- consistent with DCA's high percentage of American employees -- many of the employees who were discharged in the September 1990 workforce reduction worked in departments that either had no Japanese employees, or where the employees had no Japanese counterparts. The majority of DCA's clients (more than 85%) are Japanese-owned or controlled; and these clients comprise a significant majority of DCA's business (more than 90% of client billings). In light of the fact that the vast majority of DCA's clients are Japanese, DCA had to retain some of the limited number of employees who could speak and write in the Japanese language, who had the requisite familiarity with Japanese culture and business practices, and/or who had relationships with Japanese clients --

in order to continue to communicate with and effectively service those clients.

We further note that historically, layoffs have been common in the advertising industry, even in better economic times than those at present. However, for approximately the past year the advertising industry has experienced a severe recession; and many advertising agencies in the United States have engaged in substantial layoffs. As the current issue of Business Week (September 23, 1991) reports, the advertising industry "now faces a wrenching readjustment." Indeed, Business Week observes that "In agency hallways, beleaguered employees murmur as much about pink slips as about their newest commercial." Thus, DCA's experience is no different from that of its competitors.

DCA is currently a defendant in a lawsuit filed in the United States District Court for the Southern District of New York by five former employees who were discharged in DCA's September 1990 workforce reduction, two of whom earlier testified before this Subcommittee. This lawsuit alleges that these five former employees were discharged because they were "American-born." However, four of the five plaintiffs in this lawsuit worked in departments where they had no Japanese counterparts; and three of the five worked in departments that had no Japanese employees whatsoever. Moreover, it was American executives who chose the two plaintiffs who have testified before this Subcommittee to be among the employees discharged in the workforce reduction.

We contend that the allegations of discrimination advanced in this lawsuit are without merit. DCA is vigorously defending the lawsuit. DCA fully expects that the facts surrounding this workforce reduction will be addressed in the litigation, and that DCA will be found to have acted consistently with the law and with its policy of non-discrimination.

* * * *

CONCLUSION

In summary, DCA recognizes the importance of being a good "corporate citizen" in its employment practices. We are committed to equal employment opportunity, and we are proud of our progress to date in achieving a diversified American staff at all levels of DCA. We will, of course, continue our efforts to hire and promote the best-qualified staff available and to increase the diversity of our workforce, which we believe is an integral part of achieving our goal of "communications excellence" in advertising.

I sincerely hope that this statement addresses the concerns of the Subcommittee. I will be happy to answer any questions.

Thank you.

Exhibit A

Staffing September 1991	American M	American F	Chinese M	Chinese F	Hispanic M	Hispanic F	Indian M	Indian F	Japanese M	Japanese F	Total M	Total F	Total Total
Clerical	6	16	0	2	2	1	1	1	1	2	10	22	32
[%]	[20]	[50]	--	[6]	[6]	[3]	[3]	[3]	[3]	[6]	[8]	[18]	[26]
Professional	19	15	2	1	0	0	0	0	2	1	23	17	40
[%]	[46]	[37]	[5]	[3]	--	--	--	--	[5]	[3]	[18]	[14]	[32]
Supervisory/Manag	12	10	0	1	1	0	1	0	4	0	18	11	29
[%]	[42]	[35]	--	[3]	[3]	--	[3]	--	[14]	--	[14]	[9]	[23]
Executive	8	0	0	0	0	0	0	0	6	1	14	1	15
[%]	[53]	--	--	--	--	--	--	--	[40]	[7]	[11]	[1]	[12]
Officer	5	--	--	--	--	--	--	--	3	--	8	--	8
[%]	[63]	--	--	--	--	--	--	--	[37]	--	[7]	--	[7]
Total Staff	50	41	2	4	3	1	2	1	16	4	73	51	124
[%]	[40]	[33]	[2]	[3]	[2]	[1]	[2]	[1]	[13]	[3]	[58]	[42]	[100]

Mr. LANTOS. Thank you very much, Mr. Matsushima.

Mr. Matsushima, your prepared testimony states categorically that your company has never discriminated against any U.S. employee based on national origin, race or sex. Is that your testimony under oath?

Mr. MATSUSHIMA. Yes.

Mr. LANTOS. You have never discriminated on the basis of national origin, race or sex?

Mr. MATSUSHIMA. We never have.

Mr. LANTOS. You never have.

Well, let me focus on your work force reduction that took place on September 6 of last year. According to your testimony, 23 employees were discharged and two independent contractors were terminated. Of those 25 people, how many were United States citizens and how many were Japanese?

Mr. MATSUSHIMA. Actually, at that time, the 26 people that were laid off, 25 of them are Americans and one is Japanese. But prior to that layoff——

Mr. LANTOS. Let's just stay with that figure for a minute because I want to deal with that.

You, a year ago, laid off 26 people, is that right?

Mr. MATSUSHIMA. Correct.

Mr. LANTOS. And 25 of those were U.S. citizens?

Mr. MATSUSHIMA. Correct.

Mr. LANTOS. Yet you are testifying there was no discrimination against U.S. citizens.

Mr. MATSUSHIMA. Mr. Chairman, I would like to mention that just prior to that layoff there are two Japanese——

Mr. LANTOS. I understand that, that two Japanese also resigned.

Mr. MATSUSHIMA. Resigned.

Mr. LANTOS. Had they not resigned, would they have been fired, or would two additional Americans have been fired?

Mr. MATSUSHIMA. Well, Mr. Chairman, at the time I was hired by Dentsu and not an employee of DCA. I would like Mr. C. Ray Freeman, our chief operating officer, to answer that question.

Mr. LANTOS. Fine.

Mr. FREEMAN. I have been DCA's chief operating officer since July 1990, and as part of coming to DCA, I was responsible for the organization and the carrythrough of these layoffs.

The two Japanese which you asked about, prior to the time we did the layoffs, their names were on the list of people who would be let go. They had resigned before the general layoff took place.

Mr. LANTOS. Were the circumstances of their resignation and their benefits upon resignation, were those identical to the 25 Americans who were laid off?

Mr. FREEMAN. To the best of my knowledge, yes.

Mr. LANTOS. They were given no special privileges, no special benefits?

Mr. FREEMAN. To the best of my knowledge, that is true. We put together a——

Mr. LANTOS. Why did they resign?

Mr. FREEMAN. They did not work directly for me. They worked for an American manager who worked for me, so I'm not complete-

ly sure of why they resigned, other than I believe one wanted to return to Japan.

Mr. LANTOS. OK.

Mr. FREEMAN. She was near retirement age. I don't recall the reason for the second person.

Mr. LANTOS. According to the testimony of a former DCA employee, Mr. Russell Goyette, the only Japanese person let go was an older lady who had expressed her desire to retire and to return to Japan; is that the person you're talking about?

Mr. FREEMAN. That's the one that I know about.

Mr. LANTOS. Well, that doesn't sound to me like "firing." That means that, in the twilight of her life, she wants to return to her native country and retire from work. That's a reasonable move on her part. That certainly doesn't do anything for your statistics.

Let me leave this matter because, quite frankly, when you let 26 people go, and 25 of those are U.S. citizens, that doesn't sound to me like nondiscriminatory treatment. That sounds to me like palpably discriminatory treatment. But let me move on to another issue.

In your prepared testimony, sir, on page 12, you say the following: "In light of the fact that the vast majority of DCA's clients are Japanese, DCA had to retain some of the limited number of employees who could speak and write in the Japanese language, who had the requisite familiarity with Japanese culture and business practices, and/or who had relationships with Japanese clients, in order to communicate with and effectively service those clients." That's your statement. I have serious problems with the reasoning that lies behind that statement, so let me explore it.

More than 85 percent of DCA's clients are Japanese-owned companies, is that correct?

Mr. MATSUSHIMA. That's correct.

Mr. LANTOS. What percentage of these Japanese-owned companies operate or do business here in the United States?

Mr. MATSUSHIMA. All of them.

Mr. LANTOS. All of them do. That's right. These are all companies operating in the United States.

What percentage of your work for these Japanese companies was geared to advertising in the United States?

Mr. MATSUSHIMA. I beg your pardon, sir?

Mr. LANTOS. All of it was, wasn't it?

Mr. FREEMAN. Ninety-five percent of it, yes. Most of it——

Mr. LANTOS. Describe the 5 percent for me.

Mr. FREEMAN. We do some advertising which is translated into Japanese, which appears in Japanese publications.

Mr. LANTOS. Ninety-five percent of it is related to——

Mr. FREEMAN. Most of it appears in American media and in American publications, yes.

Mr. LANTOS. Can you tell us the names of some of these Japanese-owned companies that were DCA clients in September 1990?

Mr. FREEMAN. The names of our clients?

Mr. LANTOS. Yes.

Mr. FREEMAN. Canon, U.S.A.——

Mr. LANTOS. Canon. Yes, go on.

Mr. FREEMAN [continuing]. Is a large client. Japan Airlines.

Mr. LANTOS. Japan Airlines, go on.
Mr. FREEMAN. Nikko Hotels.
Mr. LANTOS. Nikko Hotels. Go on.
Mr. FREEMAN. Those comprise the largest clients.
Mr. LANTOS. Those three make up——
Mr. FREEMAN. Those three would make up 80 percent——
Mr. LANTOS. Of your business.
Mr. FREEMAN. Of our business.
Mr. LANTOS. Did any of these three companies communicate to DCA that they would rather be serviced by a Japanese employee than an American employee?
Mr. FREEMAN. To me, no. No, not that I—no one has ever communicated that to me, no.
Mr. LANTOS. OK. Let's assume for purposes of argument that they had, would that, in your view, justify terminating American rather than Japanese employees?
Mr. FREEMAN. No. The way we operate——
Mr. LANTOS. Let me just pursue my line and then I'll give you all a chance to answer.
Can you explain to me—because your logic, frankly, leaves me ice cold, ice cold—why in a business su :h as yours, which is advertising—is that correct?
Mr. FREEMAN. Yes, it is.
Mr. LANTOS. And it's advertising in the United States?
Mr. FREEMAN. Yes.
Mr. LANTOS. Why, in a business such as yours, that prepares advertising for client companies operating in the United States for the American advertising market, with its emphasis on American culture and business practices, it was so essential to retain employees who could speak and write in the Japanese language and who had familiarity with Japanese culture and practices to such an extent that all DCA employees who were discharged last September were Americans?
I mean, my peasant common sense tells me that if you're in the advertising business in the United States, you want people who are thoroughly conversant with American culture, American habits, the English language, American attitudes, not attitudes and language practices which are relevant in Yokohama. Am I wrong?
Mr. Matsushima, did you understand what I was saying?
Mr. MATSUSHIMA. You are correct.
Mr. LANTOS. I am correct. I appreciate that answer. It was a very straightforward and honest answer.
So your reasoning, really, doesn't hold any water, does it, that you need all this Japanese cultural sensitivity to sell Japan Airlines to American travelers. I mean, what you want to do is somebody who understands what makes American travelers buy tickets.
Mr. FREEMAN. May I have the opportunity to explain?
Mr. LANTOS. You surely may.
Mr. FREEMAN. Most of our professionals are Americans who are dealing with marketing subjects. Many of our clients are Japanese people who have been brought here on assignment. None of the American employees do speak Japanese. They understand the American marketplace very well, they understand how to sell in the American marketplace. That's the reason we hire them.

Often, in a business discussion, quite honestly, I have a difficult time explaining precisely in English to a Japanese person. We find the people that are on assignment from Dentsu very helpful. I speak to Americans in Canon U.S.A. and the Japanese speak to the Japanese, and we sit and we communicate.

Mr. LANTOS. I find your explanation remarkable and very persuasive, because what you are saying is that the pernicious employment practices of some Japanese companies working in the United States makes for pernicious employment practices by other Japanese companies who cater to them. I mean, no one could have given a more powerful case for discrimination than you just have, because what you are saying is absolutely true, that you have these wonderful American advertising specialists who really do the work, correct? But in order to sell their product to the top people who really make the decisions and who are Japanese, you need other Japanese to interact with them. That's your testimony.

Did I paraphrase you fairly?

Mr. FREEMAN. No, I don't believe you did.

Mr. LANTOS. OK. Then you tell me where it was unfair.

Mr. FREEMAN. I don't think there's anything pernicious about what we are attempting to do, to serve our clients. Basically, we have Americans with only a few Japanese who help us interface with other Japanese.

Mr. LANTOS. But that's not my point, and that wasn't your point. You may try to back peddle at the moment, but you won't succeed. Your point was earlier that the people who make the decisions, who really say yes or no, are Japanese in the companies you service; is that correct?

Mr. FREEMAN. Not always, no.

Mr. LANTOS. But principally?

Mr. FREEMAN. Principally, yes. Principally.

Mr. LANTOS. OK. And in order to cater to the fact that your three top clients have in decisionmaking positions Japanese, you need Japanese yourselves to interact with them?

Mr. FREEMAN. Yes, because of the language, we do.

Mr. LANTOS. No, because of the pernicious employment practices by those companies, you are claiming to be forced into pernicious employment practices yourself. There is no escaping the logic of your very accurate and comprehensive answer. You said that the work is done by Americans, but that work product has to be sold to the top decision makers, and since the top decision makers are Japanese, other Japanese are more effective in selling this work product than would you be. That's what you said.

Mr. FREEMAN. I didn't say more effective. I said helpful.

Mr. LANTOS. I won't quarrel about adjectives.

But I think you have now sort of closed the loop, because you are now saying—and I think the subcommittee is very grateful to you—that this is a self-perpetuating policy, that since some Japanese companies—and you mentioned three very big ones—have at the top level Japanese who make the decisions, you have to have Japanese in top positions so they will make the right decisions from your point of view, while the work product is prepared by American advertising people.

According to the testimony of Miss Judy Teller, a former DCA employee, at least one Japanese rotating employee did not perform well but was not recycled back to Japan before the normal term of his stay because this would have cost him loss of face. How many Japanese expatriates have been sent back to Japan before the end of their rotation because of poor performance, may I ask you, Mr. Matsushima?

Mr. MATSUSHIMA. I don't have statistics right now, but to my knowledge, there are some of them sent back to Japan before—our average duration of time to work at DCA is 4 years. Some of them I'm sure were sent back to Japan before their due time. That's to my knowledge.

Mr. LANTOS. According to Miss Teller's testimony, she was the only female associate creative director at DCA. She was told—and I quote her, and she was quoting one of her Japanese superiors—"One woman at that level is enough."

How many associate creative directors are women today at your company, Mr. Matsushima?

Mr. MATSUSHIMA. I don't think there are any.

Mr. LANTOS. So the only one is gone now?

Mr. MATSUSHIMA. Yes.

Mr. LANTOS. How many associate creative directors do you employ?

Mr. MATSUSHIMA. About three.

Mr. LANTOS. About three. And all three are men?

Mr. MATSUSHIMA. Yes, sir.

Mr. LANTOS. And how many creative directors do you employ?

Mr. MATSUSHIMA. I'm not familiar with——

Mr. LANTOS. Please consult your figures.

Mr. FREEMAN. There is only one creative director in an agency.

Mr. LANTOS. And that creative director is a woman or a man?

Mr. FREEMAN. It's a man.

Mr. LANTOS. It's a man.

Mr. FREEMAN. Yes.

Mr. LANTOS. Now, to the naked eye, having a creative director, who is a man, having eight associate creative directors, who are all men, would indicate a very puzzling employment pattern with respect to sex distribution, would it not? Mr. Matsushima?

Mr. MATSUSHIMA. Yes, Mr. Chairman.

Mr. LANTOS. Well, you know, women are enormously creative. In the advertising field, in many American companies, the chief executive officer is a woman, the creative director is a woman. This doesn't entail heavy lifting, although lots of women are very good at heavy lifting. It relates to a creative and agile mind. Women have a tremendous talent along those lines.

Would you not feel better if some of those were women?

Mr. MATSUSHIMA. Yes, I think so.

Mr. LANTOS. I would think right now you would. [Laughter.]

Why haven't you felt this way earlier? I mean, why didn't you hire some women in these positions?

Mr. MATSUSHIMA. Well, our goal is to integrate more capable women into this field.

Mr. LANTOS. How many departments are there in your organization, Mr. Matsushima? Whatever your structure is, I accept the answer.

Mr. FREEMAN. We have about six departments.

Mr. LANTOS. How many?

Mr. FREEMAN. There are about six departments.

Mr. LANTOS. Six departments. How many of those are headed by women?

Mr. FREEMAN. None of the departments are headed by women.

Mr. LANTOS. Well, I understand the answer, but it's difficult to sort of reconcile that answer with protestations that there is no sex discrimination. Of all places, in an advertising agency, in an advertising agency, where the talents present in women are so apparent in American-owned advertising agencies. Let me go on.

We understand that DCA had a practice of holding weekly meetings on company premises to which only Japanese employees were invited. Is that true, Mr. Matsushima?

Mr. MATSUSHIMA. To my knowledge, I think there are some meetings after the work. But it's once a month and——

Mr. LANTOS. Well, let me yield to you on the frequency of these meetings. There was a series of meetings at DCA which could be attended only by Japanese employees; is that correct?

Mr. MATSUSHIMA. I think it's correct.

Mr. LANTOS. You think it's correct. I appreciate your answer.

Were matters relating to the agency discussed at these meetings? These were business meetings, policy meetings, strategy meetings?

I think he understands the question.

Mr. MATSUSHIMA. Yes, I understand the question.

Mr. LANTOS. I think he understands the question and I think he's giving me very accurate answers.

Mr. MATSUSHIMA. OK.

Mr. LANTOS. It's a simple question. I mean, if these meetings were meetings to discuss a movie, that's one thing, but these dealt with your business, correct?

Mr. MATSUSHIMA. Well, not quite. Because I attended the meeting once and we just talked—it's a principle not to talk shop while drinking. You know, while drinking, we talk horse racing, baseball games and gambling and that kind of thing. Not talk shop.

Mr. LANTOS. So there were no business meetings at DCA of any kind where only Japanese were——

Mr. MATSUSHIMA. Not business meeting of any kind. Only Japanese—actually, you know, we are isolated, 7,000 miles from Tokyo. Some of them are bachelors, some are living all by themselves. You know, maybe it's a good way to get together once a month and have a drink and talk about "chicks" and that kind of stuff. You know, it's not a big deal. [Laughter.]

Mr. Chairman, we never talk shop on those occasions.

Mr. LANTOS. Have you seen the Sumitomo calendar that we heard testimony about earlier? [Laughter.]

Mr. MATSUSHIMA. No. I never seen such a calendar.

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I'm just going to make an observation.

Although these numbers are certainly shocking, I just have a hunch that if we were to have here the 20 largest American-owned and American-administered advertising agencies in the United States, I don't know that their numbers would be any better. We have a feeling that there is rampant discrimination, and perhaps it is more highlighted in the Japanese-owned companies. But I don't think we should assume that American-owned companies fare any better when it comes to discrimination against women. You would find that in Government service, where 6 percent of the people serving in Congress are women. You will find that in health care, you find that in the business community certainly.

I think we should be concerned about discrimination, whether someone is having a pattern of discrimination against women and minorities, but any time I see some of these charts, I wonder—and I have no idea what the 20 biggest American-owned companies are—but I wonder how much better they do. I don't know if we can say it's their cultural bias. I would hope they ±would all do better. I'm concerned about when people don't comply with U.S. law, and in this case I think there is present litigation going on about the people that were dismissed. They have allegations of discrimination against your company and it's now in the courts. I don't know this company. I'm sure they will, as they say, vigorously defend their lawsuit. But that's for a judge to decide.

I think we should be concerned about whether they have complied with the laws and whether this subcommittee should investigate whether new laws are needed. I think that the laws on the books are certainly strong enough, if we would just adhere to them. I wish that the United States companies, who maybe have representatives here, would not be so comfortably smug and think that they're the good guys and that foreign-owned companies are the bad guys. I think historically there's a pattern of discrimination that exists in U.S.-owned and U.S.-administered companies as well. I would hope that all of you would improve these shocking statistics. I hope that all of you would see merit in hiring and promoting women and minorities in leadership positions. I hope that the judge issues a good opinion and hears both sides and issues his opinion based on merit.

I don't have anything else to say.

Mr. LANTOS. Congressman Shays.

Mr. SHAYS. Thank you, Mr. Chairman. I would just like to understand this chart that was referred to in the back of your testimony, sir, so that I can understand a little better.

When I look at this chart, what I see is a category for American, Chinese, Hispanic, Indian, Japanese and then the total. I'm assuming that the Chinese that are hired are American citizens, is that correct? They're not Chinese citizens.

Mr. FREEMAN. They're American citizens.

Mr. SHAYS. And Hispanics would be, in many cases, American citizens?

Mr. FREEMAN. Yes, that's true.

Mr. SHAYS. And the Indians would be American citizens?

Mr. FREEMAN. Yes.

Mr. SHAYS. Then what I find a little confusing is the lack of category—unless I'm just missing it. Is there a category for black, for Africans, Caribbeans, which would be Hispanic, but blacks——

Mr. FREEMAN. No. Currently, at this time, we don't have any black employees in the agency.

Mr. SHAYS. There is no black employees whatsoever in your company? Take your time. I'm in no rush.

Mr. FREEMAN. I'm told that the committee asked for these categories and those are the ones we complied to.

Mr. SHAYS. Then let me ask you this. Are there any blacks?

Mr. FREEMAN. No. In answer to your question, at this time there are no black employees.

Mr. SHAYS. The bottom line is, you do not have any blacks here. Now, let me just ask another question.

Mr. FREEMAN. Although I should amend that. We do have two black employees now.

Mr. SHAYS. So there are two black employees. But if there was a category for blacks, where would those black employees be in this chart of clerical, professional, supervisory——

Mr. FREEMAN. At the time they're clerical.

Mr. SHAYS. As it relates to women, do I make the assumption that the officer and the executive column on the left represents the higher paid employees?

Mr. FREEMAN. Yes.

Mr. SHAYS. Under that category, there are no women, either under officer or executive?

Mr. FREEMAN. That's correct—there is one woman under the Japanese column.

Mr. SHAYS. OK. Thank you.

When I look at this column, I notice that there are 13—I guess I'm a little confused by American, because American can also be Chinese and Hispanic, too; is that correct?

Mr. FREEMAN. Yes.

Mr. SHAYS. But in the case I'm talking about, for executive or officer, there is none in the other categories.

Mr. FREEMAN. He said the committee asked for listings on national origin, so this is the reason it's broken down this way.

Mr. SHAYS. I understand. I'm not being critical.

I do find it interesting that, one way or the other, there wouldn't have been black in there. But whether the committee asked for it or not, I think it should have been there. But what I hear you saying is, at least under the category that I'm looking at, executive or officer, if I go down, there are no blacks, no Chinese, no Hispanics, and no Indians on those positions. So I'm just going to be focusing on what I guess would be the nonblack, non-Chinese, non-Hispanic, and non-Indians who are Americans.

There are 8 executives and 5 officers who comprise 13, and then there are 7 executives for the Japanese and 3 officers for a total of 10. So when I compare those highest paid, it is fairly clear to me that, as the chairman said, almost half are in that category, that the Japanese constitute almost half of your upper management.

Mr. FREEMAN. Yes.

Mr. SHAYS. Now, the last area I wanted to cover, I'm unclear as to what categories were the layoffs. Were they all clerical, were

they all professional, or were they all supervisory/management? Did you lay off any officers or executives?

Mr. FREEMAN. No, we didn't. They were from the supervisory/managerial rank on down.

Mr. SHAYS. Let's look at that for just a second. In that total, from the supervisory and professional, was it more professional and clerical, or was it more——

Mr. FREEMAN. It was more professional, supervisory/managerial.

Mr. SHAYS. In that category, then, you had a total, in terms of—your percentage ranged around 40 percent for American non-Chinese, nonblack, non-Hispanic, and non-Indian. You had a total of about 8 percent that were Japanese at that level? It's probably even less than that.

Mr. FREEMAN. It's 14 percent of supervisory/managerial that were Japanese.

Mr. SHAYS. For the males. But then it's basically 4 percent as it relates to professional, approximately. I guess my point is, I'm just trying to reconcile the 25 versus the 26. It seemed to me that you really almost had to excise out the Americans in this process. That's just the way it looks to me.

I would just conclude that, whenever I see these charts, I try to think of my own operation. I realize that sometimes there can be reasons for a lot of this. But what we have found, sir, in every instance, blacks and women really don't stand a chance in the Japanese firms in terms of promotion. It's just been consistent, you know, whether it's your company or so on. Clearly, just 2 blacks out of 124, and in the clerical, and women not in the top 8.

I would concur that American companies have challenges, but I don't think it's anything close to that kind of statistic. I'm hopeful that you will see improvement in that area.

Mr. FREEMAN. As part of our long-range plan, it's an item to attempt to hire more qualified women in senior positions.

Mr. SHAYS. Thank you, sir.

Mr. FREEMAN. And blacks as well.

Mr. LANTOS. We next go to Mr. Hisashi Kubo, chairman of the Ricoh Corp. Your prepared statement, Mr. Kubo, is entered in the record in its entirety. You may proceed any way you choose.

STATEMENT OF HISASHI KUBO, CHAIRMAN, RICOH CORP., ACCOMPANIED BY TED GRASKE, VICE PRESIDENT OF ADMINISTRATION AND HUMAN RESOURCES, AND STUART E. EISZENSTAT, ATTORNEY, POWELL, GOLDSTEIN, FRAZER & MURPHY

Mr. KUBO. Mr. Chairman, members of the subcommittee, my name is Hisashi Kubo, and I am the chairman of Ricoh Corp. With me is Stuart Eiszenstat, our counsel in this matter.

I am happy to appear before you today, and do so willingly and in response to your invitation, to tell you about Ricoh's activities here in the United States and to answer questions you may have about our employment practices.

I have submitted a detailed written statement that I respectfully ask the subcommittee to include in the record.

Mr. LANTOS. It will be included in the record.

Mr. KUBO. I ask for your patience with my English, which despite much practice, is not yet as good as I would like it to be.

Mr. LANTOS. It's very good.

Mr. KUBO. While I understand English fairly well, with your permission, I will rely on a translator for responding to questions in order to avoid possible misunderstanding.

Mr. LANTOS. That's fine.

Mr. KUBO. I am proud of the substantial contribution which Ricoh makes to the American economy through our work force of over 3,000 people and in the communities in which our employees live.

Ricoh is not just an assembly company for products made in Japan. We are a true U.S. manufacturing company which buys raw materials and capital equipment from U.S. sources. We also have a major research center near Stanford University.

I understand that the subcommittee's desire today is to focus on employment matters and, therefore, with your permission, I will turn immediately to them.

During our time in the United States, we have developed great respect for our U.S. work force and an appreciation of the advantages of a diversified work force and management. We respect and strive to obey all U.S. laws, including employment laws, and believe we have a good employment record.

Our employment policies totally prohibit discrimination. To ensure that this policy is understood and followed, it is widely publicized within the company in four languages: English, Japanese, Spanish, and Vietnamese. All managers are required to attend equal employment opportunity training sessions. In addition, we provide, at Ricoh's own expense, English language training for employees if their English needs improvement.

Mr. Chairman, out of more than 3,000 employees, 95 percent are American nationals. In the total work force, 35 percent are female and 40 percent minority. At the management level, American nationals are 77 percent of the total, women represent 22 percent, and minorities 15 percent.

In past hearings, Mr. Chairman, you have focused on reporting levels to the chairman of the corporation and top management. Using this reporting level analysis, 46 percent of our senior managers are American, and another 6 percent are non-Japanese nationals, 8 percent are female—which compares well with a recent study of women in such senior positions at Fortune 500 companies—and 7 percent are minorities.

In terms of Ricoh's definition of senior management—director and above—56 percent are American nationals, and of the total number of managers, 3 percent are female and 5 percent are minority.

While the number of women and minorities in senior management is not as high as we would like, we have made increased representation of women and minorities a high priority and are actively pursuing affirmative steps to improve the situation.

Of the top 10 executives, including myself, we have four American nationals. Just as American subsidiaries do abroad, we have found it necessary to fill some top positions with managers who

have been trained and gained necessary experience working for our Japanese parent company.

Mr. Chairman, we understand the importance of even greater diversity in our senior management. Because this goal is so important, we have expanded our earlier efforts by adopting a management diversity program which we believe is very comprehensive and sensible.

The program calls for five improvement activities. First, mandatory training on employment rules for all managers in the United States; second, a new employment law training program in Japan; third, expanded language and cultural training for American managers; fourth, expanded opportunities for rotation of Americans to Japan; and fifth, a new management development review system intended to increase the number of Americans, particularly women and minorities, in senior management. As part of the program, bonus incentives will be awarded to those who contribute to achieving our goals.

In conclusion, let me assure you, Mr. Chairman, that Ricoh takes very seriously its obligation to be an equal opportunity employer. Indeed, these hearings have provided us with a chance to measure our progress and set new goals for the future.

I would be happy to answer any questions the subcommittee might have.

[The prepared statement of Mr. Kubo follows:]

TESTIMONY OF HISASHI KUBO

CHAIRMAN

RICOH CORPORATION

BEFORE THE

EMPLOYMENT AND HOUSING SUBCOMMITTEE

OF THE

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

SEPTEMBER 24, 1991

Mr. Chairman, members of the Subcommittee, my name is Hisashi Kubo and I am the Chairman of Ricoh Corporation. I am happy to appear before you today, and do so voluntarily and in response to your invitation, to tell you about Ricoh's activities here in the United States, and to answer any questions you may have about our employment practices.

In its many years in the United States, Ricoh has established a substantial manufacturing, marketing, and research and development presence that has significantly benefited both Ricoh and the communities in which it has located. Through our manufacturing and joint venture efforts, we have brought new jobs, products and technologies to the U.S. We have also proven to be a good "corporate citizen," supporting numerous worthy U.S. causes.

Over the years, Ricoh has developed great respect for its U.S. employees and has come to appreciate the advantages of having a diverse workforce. We respect and strive to obey all U.S. laws, as we do the laws of all countries in which we do business, and we have had good success in doing so. We are proud of our employment record. While we, like most companies, are not perfect, our record is a good one, and one that we are constantly striving to improve.

RICOH'S INVOLVEMENT IN THE U.S.

Ricoh manufactures and sells office equipment, primarily copiers, facsimile machines and related supplies, and is proud of the role these Ricoh products have played in helping to radically transform the way we communicate in the information age. We also manufacture and sell thermal paper and cameras.

1. Manufacturing

For longer than any of our competitors in the office equipment business, Ricoh has been actively bringing investment, jobs and technology to the United States. We are justifiably proud of this record, and of the fact that our investment in the U.S. has been mutually beneficial to the company and to the communities where we have located.

Initially, our presence in the U.S. market was primarily focused on marketing and selling products made in Japan. However, Ricoh very early on recognized the advantages of opening production facilities in the United States. In 1973, we opened the first foreign-owned U.S. manufacturing facility for office equipment. In 1976, when we christened our first copier facility here, it was likewise the first foreign-owned copier facility in the United States. The same was true of our facsimile machine factory, which first began turning out fax machines in 1986.

Although we have recently gone through a period of down-sizing due to competitive pressures, we still employ over 3,000 people in the United States, most of them in California and New Jersey. Ricoh Electronics Incorporated, our manufacturing subsidiary, has production facilities in Irvine, Santa Ana and Tustin, California and Gwinnett County, Georgia. This latter facility, which opened in July of 1990, is Ricoh's most automated supplies manufacturing facility in the world. To date, we have invested more than $160 million in our U.S. manufacturing facilities.

Far from being mere "screwdriver" operations that put together finished products from parts manufactured abroad, Ricoh's facilities engage in true manufacturing, purchasing most raw materials and capital equipment from U.S. sources.

2. Research and Development

One example of Ricoh's commitment to bringing technology to the U.S. is its decision in 1979 to establish a U.S. research and development presence, becoming one of the first Japanese companies to do so. This decision has led to many technological breakthroughs, including the first fax machine capable of communicating over data networks, and Ricoh's Telepress systems for satellite transmission of camera-ready pages and separations for full-color printing of publications.

In addition, in 1988 Ricoh established the California Research Center near Stanford University. The Center studies artificial intelligence and neural networks. The products of research efforts at the Center will be used to develop more intelligent fax machines, and computers and copiers that are able to recognize oral commands. Already the Center has developed a new technology capable of compressing digital color images, which enables color office products to perform up to 30 percent faster than existing alternatives.

3. Joint Ventures

Ricoh has teamed up with several U.S. corporations in various ventures to bring high-quality products to the U.S. market. For example, Ricoh and AT&T jointly market all-digital facsimile communications and network services. Ricoh has also granted a non-exclusive license to Azon Corporation, enabling that company to manufacture thermal paper for facsimile machines.

RICOH'S INVOLVEMENT IN THE COMMUNITY

Since Ricoh Corporation was first established by its Japanese parent, it has been involved in the communities where it located, striving always to live up to the highest standards of corporate citizenship. In the past two years, Ricoh has supported nearly 100 non-profit and civic organizations across North America. These activities and organizations have included, among others:

- in 1989, we donated $100,000 to the American Red Cross for relief efforts after the devastating San Francisco earthquake;
- last fall, Ricoh helped set up a bank of fax machines in 19 communities throughout California to enable friends and relatives of military personnel to receive messages from those participating in Desert Storm;
- we also helped in putting together a fax network for the Lost Child Network, a nationwide group of police

precincts committed to the recovery of abducted children;

- for many years, Ricoh has actively supported MESA (Mathematics, Engineering, Science Achievement), a California-based program designed to encourage minority students to study these important subjects;

- Ricoh offers its Hispanic, Vietnamese and other minority employees English as a Second Language courses in the workplace, free of charge;

- Ricoh is an official sponsor of the U.S. Olympic Team, providing approximately $1.7 million in cash and equipment for the 1992 Team. We also are building a worldwide Olympic Fax Network, which will enable the International Olympic Committee to exchange documents with its national affiliates in seconds. The Network is 75 percent complete, and will ultimately link 166 countries on six continents.

We at Ricoh are proud of the depth and extent of our involvement with worthy American causes. We firmly believe that investing in jobs and technology is only a part, albeit an important part, of being a good corporate citizen, and that participating in efforts to improve the community is just as essential.

RICOH'S EMPLOYMENT PRACTICES

During our many years in the United States, we have developed a great respect for our U.S. employees and have come to appreciate the advantages of having a diverse workforce. We also understand our obligation to abide by U.S. employment laws, and do our best to live up to this obligation.

Our employment manual sets out in clear, unambiguous terms Ricoh's commitment to be an equal opportunity employer:

> It is the policy of Ricoh Corporation to recruit, hire, train and promote persons in all job titles without regard to race, color, religion, sex, national origin, age, marital status, sexual orientation, citizen status, handicap or veteran status.

To ensure that this policy is understood and followed, this and other expressions of Ricoh's policy of nondiscrimination are widely publicized throughout the company. This policy is set forth in the Corporate Policy Manual, which is distributed to all supervisory and managerial employees, and explained in the "Welcome to Ricoh" handbook distributed to all employees upon joining Ricoh.

In addition, managerial and supervisory personnel, both Americans and Japanese, are provided "EEO training" designed to

- increase their sensitivity to various forms of inappropriate racial, ethnic, age and gender prejudices;
- ensure that Ricoh managers use job-related, objective criteria in evaluating qualifications and job performance; and
- describe EEO requirements and their implications for management decisions.

The overall message of this training is that good management and equal employment opportunity go hand-in-hand in managing a diverse workforce.

Ricoh also participates in various programs aimed at creating opportunities for disadvantaged groups:

- we work with the Private Industry Council of Essex County, New Jersey, which is a cooperative venture of business, labor and government. The PIC administers programs for dislocated workers, veterans, economically disadvantaged youth and older workers;
- we participate annually in the Black Engineering and Science Students Association job fair at the University of California at Berkeley;
- we also participate in the Center for Employment Training, which provides skills training to non-college graduates seeking to enter the job market;
- Ricoh participates in the "10K" program, designed by the Departments of Education and Labor to implement school-to-work transition programs for minority students.

Ricoh's commitment to equal opportunity employment has enabled it to maintain a good employment record. Like most companies operating in the U.S., we have had complaints from disaffected employees. However, we believe that we have had fewer complaints than many other companies, both U.S.- and foreign-owned, of our size.

The best evidence that we have taken seriously our obligation to be a good corporate citizen and to abide by U.S. employment law is that in our entire history of operating in the United States, only once has the Equal Employment Opportunity Commission found -- under very unusual circumstances -- "reasonable cause" to believe that Ricoh violated any U.S. anti-discrimination law, and that matter is currently in litigation in federal court where Ricoh fully expects to be vindicated. Furthermore, no state or federal court has ever found Ricoh to have violated U.S. anti-discrimination law.

DISCRIMINATION COMPLAINTS

I realize that I am appearing before you today because of testimony the Subcommittee has heard from two former Ricoh employees. Let me therefore briefly explain the circumstances of both of those cases.

1. Chester Mackentire

Chester Mackentire was hired in August of 1987 by our facility in San Jose as a sales manager to market and sell a first-generation optical disk drive assembly. This mass storage device uses compact disk technology to enhance the memory capacity of computers. The division that hired Mr. Mackentire

also sold one other product, a more conventional removable hard disk drive, which is a magnetic storage device.

This division lost several million dollars in 1986 and 1987, and the losses were projected to continue in 1988. These continuing losses forced us to streamline what had become an extensive sales and marketing organization. As a result of the streamlining process, eight positions including Mr. Mackentire's were eliminated. Mr. Mackentire's responsibilities were assumed by two lower level sales personnel, both American (one male and one female).

Mr. Mackentire subsequently filed a complaint with the EEOC alleging that "national origin" discrimination was the basis for his being laid off. The first EEOC investigator assigned to the case properly rejected this charge in April of 1989, finding, as Ricoh argued, that there was economic justification for Ricoh's "reduction in force." However, for reasons that were never explained to Ricoh, the EEOC letter containing this finding was later withdrawn and a new EEOC investigator was assigned to the case.

Several months later, a new EEOC determination was issued based on the <u>new</u> theory that if Mr. Mackentire had been <u>promoted</u> to head the entire division, he would have avoided the layoff. Ricoh contested this startling determination vigorously, pointing

out that Mr. Mackentire, during his brief ten-month tenure at Ricoh, had hardly performed his job with such distinction that he deserved to be promoted to head the entire division. We also pointed out that Mr. Mackentire was only a middle level manager with limited expertise and contacts -- as his work experience before joining and after leaving Ricoh reflects.

Before the EEOC ruled on Ricoh's request for reconsideration, it closed the case at Mr. Mackentire's request and subsequently chose not to litigate it on his behalf. In February of last year, Mr. Mackentire filed an individual suit against Ricoh in federal district court in San Francisco.

On July 3 of this year, Ricoh filed a summary judgment motion in the federal court case, based on its belief that Mr. Mackentire's claims are meritless. The motion is currently before the court, and we expect that the court will recognize that Mr. Mackentire's position was eliminated for legitimate business reasons and will dismiss his claims summarily.

We had expected a hearing on our summary judgment in late September, but on August 23 Mr. Mackentire's attorney unexpectedly asked the court for permission to withdraw from the case. Consequently, it is not clear how soon the court will be able to act on our summary judgment motion. Should any part of

the case ever actually go forward to trial, we are confident of prevailing on the merits.

2. Nancy Cosgrove

Nancy Cosgrove was hired by Ricoh in 1984 in its Corporate Communications department as a public relations product manager. In October of 1988, she was one of 19 candidates for a key public relations position in the company. Largely because she was a current employee and was therefore given the benefit of every doubt, Ms. Cosgrove was one of three finalists for the position. However, another candidate with superior qualifications was ultimately hired. Most importantly, the man who was hired to fill the position had experience with an advertising agency that Ricoh believed crucial to the position, experience that Ms. Cosgrove lacked.

Ms. Cosgrove thereupon charged Ricoh with gender and marital discrimination before the New Jersey Division of Civil Rights. After an August 1989 hearing which Ricoh believes would have resulted in a favorable determination for it, Ms. Cosgrove withdrew her complaint without explanation.

In February of 1990, Ms. Cosgrove was one of approximately 100 employees laid off as part of a general corporate restructuring. During this period, 11 Japanese nationals were

also retransferred to Japan on economic reasons. She shortly thereafter sued Ricoh, alleging, among other things, gender, national origin and marital discrimination, and that her layoff was in retaliation for having filed a complaint with the Division of Civil Rights.

Ricoh is confident that Ms. Cosgrove's claims are groundless:

- Ms. Cosgrove's gender discrimination allegation is based on her assertion that she was denied promotion because of her gender. In fact, the position to which she aspired was filled by a better qualified candidate.
- Neither before this Subcommittee nor in her court case, which includes a lengthy deposition taken under oath, has Ms. Cosgrove presented any facts to support her claim of national origin discrimination. The position to which Ms. Cosgrove aspired was not filled by a Japanese national but rather by an American male.
- Ms. Cosgrove's termination was clearly not retaliatory, in that she was one of over 100 employees laid off over a several-month period ending in March 1990. Indeed, the department where Ms. Cosgrove worked was ultimately phased out completely.

This case is currently still in discovery, and Ricoh plans to move for summary judgment as soon as is procedurally possible.

RICOH'S MANAGEMENT DIVERSITY PROGRAM

Ricoh aggressively seeks to recruit American men, women and minorities into its workforce and management. Out of a total workforce of over 3,000, 95 percent of all employees are American

nationals. Approximately 35 percent of Ricoh's workforce is female and 40 percent is minority (including Hispanic, African-American and non-Japanese Asian).

Approximately 77 percent of all management positions are held by American nationals, with 22 percent of total management female and 15 percent minority. Using Ricoh's senior management categories (director and above), 56 percent are American nationals, with female and minority representation at 3 percent and 5 percent, respectively. Of the top ten executives in the company, including myself, four are Americans.

Using the reporting level analysis which the Chairman employed in earlier hearings, 46 percent of our senior managers are American (and another 6 percent other non-Japanese nationals), 8 percent are women and 7 percent are minorities. With respect to the number of women in senior management, this 8 percent figure compares favorably with the Feminist Majority Foundation's recent finding that on average only 2.6 percent of senior management positions at Fortune 500 companies are held by women.[1/] While the number of female and minority managers is not

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1/ The Feminist Majority Foundation survey, published earlier this year, reveals that 34 of the Fortune 30 companies have no women at all in officer-level (vice-president and up) positions. This includes the three major U.S. automobile manufacturers (General Motors, FOrd and Chrysler), major aerospace defense contractors (Boeing, McDonnell Douglas, Rockwell International), major U.S. oil companies (Texaco, Chevron, Amoco, Occidental Petroleum), and many others.

as high as we would like, we have made increased representation of women and minorities in senior management a high priority and are actively pursuing affirmative steps to this end.

Just as American subsidiaries do abroad, we have found it necessary to fill some positions with managers who have been trained and gained necessary experience working for our Japanese parent. These are positions in which fluency in Japanese, experience working with our parent company, and specialized knowledge of the products and manufacturing technologies we are bringing to this country are important.

Mr. Chairman, we think this is a sound record. At the same time, we appreciate the value of having even greater diversity in our senior management and therefore have expanded our earlier substantial efforts by adopting a comprehensive five-point management diversity program to further reinforce efforts under our Affirmative Action plans.

This program's main elements include:

- Mandatory EEO and Affirmative Action Training: We have mandated regular EEO and affirmative action training for all upper-and mid-level managers. All managers, up to and including the President, will be required to participate in training programs and to take annual refresher courses. This requirement will be formalized through a recertification procedure.
- Employment Law Training in Japan: We are developing a new program in Japan, designed to promote better

understanding of U.S. affirmative action and equal opportunity laws and policies and the value of cultural diversity in management. Management training will be available to all managers planning to transfer to the U.S. and other officials with U.S. responsibilities.

- Expanded language and cultural training: We will be expanding our current informal Japanese language training program to ensure that all American managers who want to learn Japanese will have the opportunity to do so. We also will give more emphasis to cultural education in our training program.

- Expanded Rotation System: We have committed to increasing and formalizing the opportunities for American managers to work in Japan, and are in the process of developing appropriate procedures and guidelines as part of an overall examination of rotation practices for American and Japanese managers.

- Management Development Review System: To increase diversity and ensure the fullest career development of all managers at Ricoh, we recently established a new management development review system. Among our first and highest priorities will be to raise the number of women and minorities in senior management.

  At the heart of the system will be a recently-established review committee responsible for developing quantitative goals for increasing the number of Americans, women and minorities in senior management and seeing that they are met. As appropriate, executive bonuses will be influenced by success in meeting these goals.

CONCLUSION

In sum, Mr. Chairman and members of the Subcommittee, we are proud of our contributions in the United States. Over the years, we have brought more than 3,000 new jobs to this country, have invested heavily in manufacturing and research and development efforts here, and have been a good citizen in the communities in which we are located.

We have scrupulously sought to obey all U.S. laws, including those covering employment discrimination, and through such efforts as our new management diversity program have gone above and beyond the narrow requirements of the law. We are deeply committed to the U.S. economy and our American workforce, and look forward to a long and productive future in this country.

It would be sad, Mr. Chairman, if this favorable record were to be obscured by the bitter recriminations of two disgruntled former employees. I therefore ask that this Subcommittee, when considering Ricoh's experience in the U.S., look at the entire picture, and not simply the distorted view offered by these witnesses.

In conclusion, let me assure you, Mr. Chairman, that Ricoh takes very seriously its obligation to be an equal opportunity employer. Indeed, these hearings have provided us with a chance to measure our progress and set new goals for the future.

I would be happy to answer any questions the Subcommittee might have.

Mr. LANTOS. Thank you very much, Mr. Kubo.

Before we get to our questions, my friend and colleague from California, Congressman Cox, has joined us and he would like to make a brief statement. I am happy to call on you.

Mr. COX. Thank you very much, Mr. Chairman, and thank you to the ranking Republican member, Congresswoman Ros-Lehtinen. Like you, I am a member of the Government Operations Committee, but I am not a member of this subcommittee. Rather, I am here for the limited purpose of introducing a constituent of mine, the chairman of Ricoh, whose testimony we have just heard, Mr. Hisashi Kubo.

Ricoh employs hundreds of people in the part of southern California that it is my privilege to represent—Irvine, Santa Ana, and Tustin. I cannot speak to all of the employment practices of any of the firms represented here today, including those of Ricoh. I can tell you that I have toured Ricoh's facilities and I have met with several of the hundreds of Californians who work there.

Ricoh is comprised in large measure of Americans—indeed, of Indian Americans, and Hispanic Americans, and Vietnamese Americans and Peruvian Americans—and even some native born California Americans. I can tell you that each of these people is so committed to America that Ricoh, overall, has devoted itself in many respects to charitable contributions in our community and, in many ways, the employees of Ricoh are very much involved as Americans and as Californians in the fabric of our daily life.

Let me also say that discrimination against women, minorities, or any persons on the basis of their national origin, is abhorrent. Discrimination on the basis of national origin is no less abhorrent when the victims are Americans. So I congratulate this subcommittee on the work that you are doing. I urge you to pursue vigorously the issues that you have undertaken.

I will add that we who believe in free trade, in low tariffs, and in vigorous international competition as a means of stimulating international wealth, should be the first to recognize that the rules of an international marketplace must be vigorously enforced. Free trade is a means to reduce, if not eliminate, national barriers. Discrimination on the basis of national origin, race, sex, and creed, on the other hand, erects new barriers. Free trade, in other words, demands equal opportunity or else the world will not have the benefit either of the wealth creation that free trade promises, or of social justice.

I extend my welcome to the chairman of Ricoh, who is here. I hope that this committee, whatever it pursues, will do so with the spirit in mind of equal opportunity for not only California born Americans but Japanese-Americans and all those who are seeking to invest in this country. We cannot, as a nation, continue to prosper unless we attract foreign investment, and we should make our American business community hospitable to those who are seeking to comply, to the best of their ability, with our laws.

I think that the work of this subcommittee today will be very useful in illustrating how better firms can comply and, frankly, to smoke out the greatest offenders who should be, it seems to me, held up to opprobrium collectively. So thank you for permitting me

that statement, and thank you for permitting me to introduce my constituent firm.

Mr. LANTOS. Thank you very much, Congressman Cox.

[The following questions and answers thereto were interpreted:]

Mr. LANTOS. Mr. Kubo, you were here for the earlier testimony of your colleagues on this panel. You heard the testimony, and as you recall, one of the issues that we dealt with was the subject of advertising. You heard the dialog about advertising?

Mr. KUBO. Yes.

Mr. LANTOS. I'm sure you understood it.

Tell me, in terms of advertising for Ricoh, is it, in your judgment, a business necessity that your advertising account in the United States be serviced by an advertising company employee who is American or Japanese? Does it make any difference to you?

Mr. KUBO. I do not see any particular difference in that.

Mr. LANTOS. So as far as you're concerned, it really doesn't make any difference whether the advertising agency that has your account has American employees or Japanese employees?

Mr. KUBO. I do not think there is any difference in that.

Mr. LANTOS. You don't think there is any difference.

Now, Ricoh follows a pattern that most Japanese companies operating in this country do; namely, employment at will in the United States and lifetime employment for Japanese employees. What justification do you have for this dual pattern of employment practices?

Mr. KUBO. I do not think that the Japanese companies practice such promise of lifetime employment, and at——

Mr. LANTOS. But they do. The general pattern of employment in Japan, as you know better than I do, is minimally very, very long term and typically lifetime. Japanese companies operating in the United States basically do have two different employment practices: employment at will, as far as American citizens are concerned, and lifetime employment as far as Japanese employees are concerned. I mean, these are the facts.

My question is, what is the justification for these facts?

Mr. KUBO. And if I may continue, Mr. Chairman——

Mr. LANTOS. Please.

Mr. KUBO. At Ricoh, we do not give any such promise of lifetime employment, and for Japanese who are in the same sense laid off, we do send them back home. Just as we lay off American workers, we do send them back home. But you can imagine that for those Japanese who have to go back to Japan, they suffer the agony as much as those Americans who are laid off.

Mr. LANTOS. Then let me ask two questions given your answer.

What is the average number of years a Japanese employee works for Ricoh?

Mr. KUBO. Are you asking me of Japanese employees at the United States, working at the Ricoh Co. in the United States?

Mr. LANTOS. Whether the individual happens to be in the United States or not, if you hire a Japanese employee in Japan, whether you send him here for 2 or 3 or 4 years or not, what is the average length of years, the number of years that a typical Japanese citizen employed by Ricoh works for Ricoh?

Mr. KUBO. I do not know the exact figures for the average employment in Japan, but my guess is about 30 to 35 years.

Mr. LANTOS. That's precisely my point. Thirty-five years is a lifetime employment.

Now, what is the average length of time an American employee of Ricoh works for Ricoh?

Mr. KUBO. I do not know exactly the average employment for American personnel. If you would like, I have the manager of our personnel department here with me and perhaps he can respond to that question.

Mr. LANTOS. Well, we will hear from him after we take a brief recess, because we have a vote.

The subcommittee is in recess.

[Recess taken.]

Mr. LANTOS. The subcommittee will resume.

We left off with the question of the tenure of Japanese and American employees at Ricoh. Your estimate of 30 to 35 years for Japanese employees I'm sure is very accurate; that is effectively lifetime employment. Now, one of your associates will give me an estimate of the United States citizens employed by Ricoh.

Mr. EISZENSTAT. Mr. Chairman, Mr. Graske has not been sworn, if you would like to do that.

Mr. LANTOS. Yes. I appreciate that.

[Mr. Graske sworn.]

Mr. GRASKE. I'm Ted Graske, vice president of administration and human resources for Ricoh Corp.

And your question addressed the average length of service at Ricoh?

Mr. LANTOS. Yes, of U.S. citizens at Ricoh.

Mr. GRASKE. OK. I will address that directly, but let me give you some background on Ricoh. The fact that although Ricoh has been in the United States for over 25 years, and had 100 employees in 1980——

Mr. LANTOS. I understand.

Mr. GRASKE [continuing]. And 3,000 today, our greatest growth period has been in the last 5 years. So the average length of service, taking all that into account, comes to about 4½ years now for the average American employee. We have employees who have 20 years of service with the company——

Mr. LANTOS. I understand.

Mr. GRASKE [continuing]. But obviously, with the growth, not many.

Mr. LANTOS. Am I safe in assuming, if you can stay with us a minute, that the annual turnover rate of United States employees is much higher than the annual turnover rate of Japanese employees?

Mr. KUBO. Mr. Chairman, could I add something, a comment?

Mr. LANTOS. Please.

Mr. KUBO. I did say that we have average employment of about 30 or 35 years, but that is up until recently. The recent trend is that we are seeing quite a few changes in our economy and people are switching companies. So we see that such a trend is increasing. Therefore, I think the number of average employment will be reduced in the future.

Mr. LANTOS. You have had a few years in the United States when you reduced your work force, in 1988 in San Jose, and in 1990 at your headquarters, and perhaps at other divisions. During these major layoffs, could you tell me how many United States nationals were dismissed and how many Japanese nationals were either sent home or dismissed?

Mr. KUBO. For 1990, we had a total labor force of 2,000 people, and we laid off 100. So 5 percent of the total was laid off.

During the same period, we did have 160 Japanese nationals and 11 were laid off. So the percentage was 7 percent.

Now, speaking of 1991——

Mr. LANTOS. Were they laid off or were they returned to the Japanese home company?

Mr. KUBO. They were returned to Japan.

Mr. LANTOS. But they continued to work for Ricoh?

Mr. KUBO. Most of them, yes.

Mr. LANTOS. So there were no Japanese layoffs and 100 United States layoffs; isn't that a more accurate way of putting it?

Mr. KUBO. Let me tell you a little bit more of the details of what I said for 1990. We had 18 sent back to Japan and 7 out of 7 were replaced. Therefore, in calculating the number, I said——

Mr. LANTOS. You sent back 18 and 7 were what?

Mr. KUBO. Replaced.

Mr. LANTOS. They were fired when they arrived in Japan?

Mr. KUBO. No.

Mr. LANTOS. So none of them were fired.

Mr. KUBO. We sent back 18 Japanese, back to Japan——

Mr. LANTOS. And all of them remained employees of Ricoh, is that correct?

Mr. KUBO. I'm not sure of that.

Mr. LANTOS. Do you know of any who were fired, of those 18?

Mr. KUBO. I have no idea.

Mr. GRASKE. Mr. Chairman, if I could speak to what Mr. Kubo was trying to say, during that period 18 Japanese personnel were rotated back to Japan. Seven were not replaced. So there was a net reduction in the number of Japanese personnel in the United States——

Mr. LANTOS. I understand that, but that is not my line of inquiry. My line of inquiry—and Mr. Kubo responds very accurately, and I might say in a very devastating fashion, with respect to this whole investigation. What you are saying is that in 1990, 100 American employees were fired, and not a single Japanese employee was fired, which is precisely my point. Japanese employees basically have lifetime tenure and American employees serve at will. Your figures underscore, in spades, what I'm saying.

Is that correct, Mr. Kubo?

Mr. KUBO. I don't know if one can say if this is lifetime employment. But the Japanese nationals we have in the United States are employees of the parent company, so it is correct for them to go back to the parent company. This process is done by American companies which are located in Japan, and not only American companies but I think European companies as well practice this kind of method. So I think this is not only for Japanese but I think this is international business practice.

Mr. LANTOS. Well, I beg to disagree with you, that it is international business practice to offer lifetime employment. Some companies have policies which provide for longer tenure statistically than others. But I'm not critical of this policy. Don't misunderstand me. I am critical of the policy of a two-track employment practice. That's what I'm critical of.

I have no trouble with your offering your Japanese employees lifetime employment. That's your privilege, it has worked out well, and it's probably a very intelligent way to go. Farsighted American companies are doing the same. I'm not at all critical of that.

But I think it is important to establish for the record, using your figures, Mr. Kubo, that last year you fired 100 United States citizens as Ricoh employees, and to the best of your knowledge, not a single Japanese citizen was fired as a Ricoh employee.

I want to move on. I don't want to dwell on this any further.

In a well-publicized case in your San Jose division a couple of years ago, in 1988, 12 people were let go in an office of less than 20 employees. How many of those fired were United States nationals and how many were Japanese nationals?

Mr. KUBO. The department that you are talking about was the department which had 16 people originally, and then we laid off 8 people. We also had three Japanese in that department. One was sent back home, one retired.

Mr. LANTOS. Of the 16 people in that department and 8 were laid off, how many of those 8 were U.S. citizens?

Mr. KUBO. I do not know exactly how many were Americans. I presume all eight were Americans.

Mr. LANTOS. Yes. Well, our information is that all eight were American citizens.

A final question on this subject—and I'm dealing now with the finding of the Equal Employment Opportunity Commission. Six months after the San Jose reduction in personnel, the division manager asked for five more people for his division. My understanding is that all of the new hires were Japanese nationals. These were the findings of the Equal Employment Opportunity Commission.

Is that true?

Mr. KUBO. As far as I know, that is not the fact.

Mr. LANTOS. What is the fact?

Mr. KUBO. I do not know the facts too well at the moment. I would like to send you the information later.

Mr. LANTOS. Then you do not know that my facts are incorrect; isn't that true? You either know the facts, in which case I want you to tell me what the facts are, or you have no basis for saying that our information is inaccurate; isn't that true?

You can't have it both ways. So which way do you choose to have it?

Mr. KUBO. Since I do not know the correct answer, I do retract what I said previously.

Mr. LANTOS. That's fine.

Well, gentlemen, let me say the picture you paint—and I appreciate the proposals for correcting things. Of course, those proposals only underscore the fact that previous practice was culpable. This subcommittee will insist that American citizens are not discrimi-

nated against by Japanese-owned companies in the United States. This will go for all American citizens. It will particularly go for the special categories of American citizens, such as women, who have been so blatantly discriminated against by Japanese-owned companies.

We are happy to have you operate in this country. We would like to have you give equal opportunity for American companies to operate in Japan, which has clearly not been the case. But that's a separate issue. What we really insist on is that Japanese companies operating in the United States live up meticulously to all of the laws, regulations, rules, and procedures that American-owned companies have to live up to. We will not give you privileged status. We welcome you on an equal basis. But we will insist that whatever cultural baggage you bring with you, this cultural baggage be adjusted to the American scene. The American scene will not adjust to the cultural baggage of foreign investors. The foreign investor has to adjust to the cultural and social and legal framework in the United States.

I very earnestly hope that these hearings, as our previous HUD hearings, serve not only to highlight some abuses, but lead in general to a cleaning up of acts by large numbers of companies where a cleaning up is long overdue.

I would like to call on my colleague and friend from Florida, Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Speaking of the American scene, I notice here in the testimony an interesting footnote, because it points out that the American scene also leaves a lot to be desired. It says a feminist majority foundation survey published earlier this year reveals that 34 of the Fortune 30 companies have no women at all in officer level, vice president and up positions. This includes the three major U.S. automobile manufacturers—General Motors, Ford, and Chrysler—major aerospace defense contractors—Boeing, McDonnell Douglas, Rockwell International—major U.S. oil companies, including Texaco, Chevron, Amoco, Occidental Petroleum, and many others.

This does not mean that the Japanese companies are exempt from scrutiny, that just because everyone else seems to discriminate, then it's OK for us to discriminate. Certainly not. Shame on all companies which discriminate against women and minorities. Shame on American-owned companies and shame on Japanese-owned companies. If there's a troubling pattern of discrimination against women and minorities in Japanese-owned companies, then certainly it merits the discussion that we have given it in this subcommittee. But let's not fool ourselves into thinking that all is right in our own back yard and that American-owned and American-administered companies are paragons of virtue when we discuss patterns of discrimination.

I would be glad to have Lee Iacocca come and testify about the number of Hispanic women vice presidents he might have in Chrysler. Perhaps next week?

Thank you, gentlemen, for being here, and ladies.

Mr. LANTOS. I welcome my colleague's comments.

Let me say that there are really two sets of issues that this subcommittee has been preoccupied with in this series of hearings.

One relates to Japanese-owned companies' discrimination against specific subgroups of United States citizens, like women, blacks, religious minorities, and there, too, the United States-owned company record is not perfect, although infinitely superior, infinitely superior.

The second issue that we were discussing—just to speak of advertising, for instance. One of the largest advertising agencies in the United States, the Wells agency, has a woman as chief executive officer. I would have difficulty expecting a Japanese advertising agency whose chief executive officer is a woman. But my colleague is correct. We have a long ways to go, not nearly as far as do the Japanese.

The second issue that we were dealing with—because we have had among our battery of witnesses victim witnesses, white males of various religious denominations, who came to us complaining about discrimination, not by virtue of being members of a religious or racial or ethnic minority group, not for being a woman, but for being a U.S. citizen.

The basic point of these hearings, the underlying point, is that a glass ceiling is hit in Japanese-owned companies operating in the United States by all United States citizens. It is hit earlier by women, it is hit earlier by blacks, but the problem is that there's a systematic pattern of discrimination against United States citizens by some of the best-known international Japanese-owned companies. We simply will not stand for this.

I want to thank you for appearing. We will have one more panel, but we will be in recess for 5 minutes for a vote.

[Recess taken.]

Mr. LANTOS. The subcommittee will please come to order.

Our last witness is Mr. James A. Puleo, Associate Commissioner for Examinations, Immigration and Naturalization Service. If you will please stand with your associate and raise your right hand.

[Witnesses sworn.]

Mr. LANTOS. We are pleased to have you gentlemen. Your prepared statement will be entered in the record in its entirety. You may proceed any way you choose.

STATEMENT OF JAMES A. PULEO, ASSOCIATE COMMISSIONER FOR EXAMINATIONS, U.S. IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY EDWARD H. SKERRETT, SENIOR IMMIGRATION EXAMINER

Mr. PULEO. Thank you, Mr. Chairman for your invitation to appear before the subcommittee today concerning certain immigrated related personnel practices of foreign-owned companies in the United States. I appreciate the opportunity to comment on these issues and the related activities of the Immigration and Naturalization Service.

Congress addressed the changing needs of business for nonimmigrant workers with the passage of the Immigration Act of 1990. These provisions of IMMACT, scheduled for implementation on October 1, 1991, made changes in some of the nonimmigrant categories that we are interested in here today and added a new category of extraordinary ability. The categories most utilized by foreign

businesses transferring senior staff to the United States as nonimmigrants are the intracompany transferees, class L, and the treaty trader or investor, class E.

Congress made substantive changes in both categories. The eligibility requirements for intracompany transferees were changed from 1 year of continuous employment a company abroad, immediately prior to admission of the alien, to 1 year of continuous employment within the preceding 3 years. The maximum period of stay in the United States for an intracompany transferee was changed from the current 5 years, and in some cases 6 years, to a maximum of 7 years for aliens admitted to render services in managerial or executive capacities, and 5 years for those admitted to render services in capabilities involving specialized knowledge.

The number of intracompany transferees admitted to the United States from fiscal year 1985 to fiscal year 1990 remained relatively constant, falling slightly from 65,300 to 64,200. The largest numbers came from the United Kingdom and Japan. The numbers for the United Kingdom fell from 12,400 to 11,900 during this period, and the number from Japan rose from 5,000 to 10,500.

The definition of a treaty trader was changed by IMMACT to include trade in services and trade in technology, in recognition of the advancements in technology that have resulted in changes in commerce and trade. IMMACT provided eligibility under this category for nationals of two countries, yet to be named, which are not parties to treaties of commerce and navigation with the United States.

There was a large increase in the number of treaty trader investors and their immediate family members during the period fiscal year 1985 through 1990, from 96,500 to over 150,000. The largest number came from Japan and the United Kingdom. The number from Japan increased from 37,000 to 73,500 per year, and the number from the United Kingdom increased from 11,500 to over 16,000.

Two other of the current nonimmigrant categories are also of interest here today. They are the temporary worker, class H, which is used for a variety of workers and trainees, and the visitor for business, class B, which is used to meet a wide range of short-term needs. Some of these workers may be described as senior staff.

The temporary worker category was also changed by the IMMACT. The H-1B class, which currently includes all aliens of distinguished merit and ability, will be limited to employees in specialized occupations beginning October 1. This change will remove prominent aliens who are not employed in specialized occupations from the temporary worker category.

Many prominent aliens will fall under the new nonimmigrant categories of O and P. Eligibility for H-1B classification will include the requirement of approved labor condition application regarding wage and working conditions by the Department of Labor. The total number of H-1B visas issued will be limited under IMMACT and may not exceed 65,000 per fiscal year. The maximum period of stay in the United States for aliens of the H-1B category was changed to 6 years by IMMACT, from the current 5 years, and in extraordinary circumstances, 6 years.

The temporary worker category also includes two other classes of nonimmigrants that are of interest here today. First, aliens coming to perform temporary services or labor for which capable, unemployed persons cannot be found in the United States, class H-2B, and second, aliens coming as trainees in programs not designated primarily to provide productive employment, class H-3. The eligibility requirements for H-2B classification include approval of a labor certification application by the Department of Labor. Those workers in the H-2B category and H-3 classification are limited to a maximum stay in the United States of 3 and 2 years respectively.

The number of aliens admitted in the temporary worker category rose from 75,000 in fiscal year 1985 to 147,000 in 1990. The number from the United Kingdom rose from 10,000 to 17,000, and the number from Japan rose from 3,000 to 11,000 during this period.

Visitors for business seek entry into the United States to engage in a variety of business related activities. They are generally admitted and remain in the United States for less than a year, though there is no limit on the number of extensions they may be granted. The number of aliens in this category admitted increased from 1.8 million in 1985 to 2.6 million in 1990. The number from the United Kingdom increased from 273,000 to 377,000, and the number from Japan increased from 205,000 to 302, 000 during this period.

The new category of extraordinary ability, class O, created by IMMACT, will be available to aliens of extraordinary ability in business and other specific areas, such as the arts. While this category is similar to the H-1B classification, only the most highly qualified temporary workers will meet the eligibility requirements. Admission in this category is for a specific event, not to exceed 3 years. An extension of stay for 1 year may be granted to complete the event.

The Service has centralized the processing of employment-related petitions and applications at the four regional service centers. This centralization will become a statutory requirement under IMMACT. Centralization has resulted in a more consistent and uniform application of the laws and regulations and uniform decisions, along with more timely service to the public. The Service efforts to detect and deter fraud have been enhanced by centralization and by the IMMACT provisions for the imposition of civil penalties and sanctions on fraud perpetrators. We are continuing our efforts to facilitate the entry of nonimmigrant workers while increasing our commitment to the deterrence and detection of fraud.

This concludes my statement. I will be pleased to answer any questions you may have, Mr. Chairman.

[The prepared statement of Mr. Puleo follows:]

Testimony of

James A. Puleo

Associate Commissioner
Examinations
U.S. Immigration and Naturalization Service

before the

House Committee on Government Operations
Subcommittee on Employment and Housing

on

Employment Discrimination by Japanese-Owned Companies in the United States

September 24, 1991
Room 2247, Rayburn House Office Building
9:30 a.m.

Mr. Chairman and Members of the Subcommittee:

Thank you for your invitation to appear before this Subcommittee today concerning certain immigration related personnel practices of foreign-owned companies in the United States. I appreciate the opportunity to comment on this issue and the related activities of the Immigration and Naturalization Service (INS).

After the passage of the Immigration Reform and Control Act (IRCA) of 1986, addressing illegal immigration, the Congress expended considerable effort exploring the range of legislative options on legal immigration reform. The Immigration Act of 1990 (IMMACT) addressed the economic needs of the United States through the structure of the U.S. immigration system.

With passage of IMMACT, the Congress created more opportunities for the immigration of professional and highly-skilled workers. The number of visas available was significantly increased from 54,000 per fiscal year to 140,000 per fiscal year, beginning October 1, 1991. The needs of business for nonimmigrant workers were also addressed. The eligibility requirements for some of the nonimmigrant categories that we are interested in here today were changed and a new category of Extraordinary Ability was created. Implementation of the new provisions on nonimmigrants is scheduled for October 1, 1991.

There has been some indication that the Congress may delay implementation of certain O and P nonimmigrant provisions for six (6) months.

Foreign-owned companies have various options to evaluate when addressing their needs for nonimmigrant workers. The visa categories most utilized for senior staff that work in the U.S. for at least one year are the Intracompany Transferee (class L), and the Treaty Trader or Investor (class E). The Exchange Visitor (class J) category is used for a variety of workers and students. The category of Temporary Worker (class H) is used for a variety of workers and trainees and the Visitor for Business (class B), is used to meet a variety of short term needs.

Under current law, an Intracompany Transferee is an alien who has been continuously employed by a company abroad for one year immediately prior to his or her application for admission to the United States and who seeks to enter the U.S. to render services to the same company in a capacity that is managerial, or executive, or involves specialized knowledge. IMMACT changes the eligibility requirement to one year of continuous employment during the preceding three-year period. Specialized knowledge includes knowledge of a company's product and its application to international markets or knowledge of a company's processes and procedures.

The company must submit a petition to the INS Service Center having jurisdiction over the location of the intended place of the alien's employment. Provisions exist for some companies to file blanket petitions for continuing approval as qualifying organizations. Centralization of the adjudications process in the four regional Service Centers has resulted in more consistent and uniform application of laws and regulations and uniform decisions. Centralization has enhanced our ability to determine whether an alien is eligible for this classification and whether the petitioner is a qualifying organization, as well as our ability to provide timely service to petitioners. This centralization becomes a statutory requirement under IMMACT. Approved petitions are forwarded to the Department of State, which has jurisdiction over visa issuance.

Intracompany Transferees are currently allowed to remain in the U.S. for a maximum of five (5) or, in some cases, six (6) years. Under IMMACT, the maximum period of authorized stay for an alien admitted to render services in a managerial or executive capacity is seven (7) years and for an alien admitted to render services in a capacity involving specialized knowledge is five (5) years. The number of admissions in this category, of citizens from all countries, fell from 65,349 in fiscal year (FY) 1985 to 64,247 in FY 1990. (The FY 1990 figures that I am citing here today are preliminary and are subject to change). The largest numbers of Intracompany Transferees came from the United

Kingdom and Japan. The number from the United Kingdom fell from 12,399 in FY 1985 to 11,894 in FY 1990. The number from Japan rose from 5,059 in FY 1985 to 10,550 in FY 1990.

A Treaty Trader or Investor is an alien who seeks to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the country of which he or she is a national. IMMACT provides eligibility under this category for nationals of two countries, yet to be named, which are not parties to treaties of commerce and navigation with the U.S. A Treaty Trader is admitted solely to carry on substantial trade between the U.S. and the country of which he or she is a national. IMMACT expands the definition of trade to include trade in services or trade in technology. The new definition codifies changes that had already been made by regulation, in recognition that advancements in technology have resulted in changes in commerce and trade. A Treaty Investor is admitted exclusively to develop and direct the operations of an enterprise in which he or she has invested, or is in the process of investing, a substantial amount of capital.

The Department of State has jurisdiction for the processing of visas in this category. Initial admission to the U.S. is for a period not exceeding one year, with an indefinite number of extensions of stay in increments not exceeding two years. Applications for extensions of stay are processed by the Service.

The statistics on the number of aliens admitted in this category include the spouses and children of the principal aliens. The number of admissions, from all countries, rose from 96,489 in FY 1985 to 150,196 in FY 1990. The largest number of Treaty Traders and Investors came from Japan and the United Kingdom. The number from Japan increased from 36,976 in FY 1985 to 73,485 in FY 1990. The number from the United Kingdom increased from 11,528 in FY 1985 to 16,281 in FY 1990.

An Exchange Visitor is an alien seeking entry into the U.S. to teach, instruct, lecture, observe, conduct research, demonstrate special skills or receive special training under a program designated by the United States Information Agency. Visas are issued by the Department of State. The period of initial admission and the length of any extension of stay (typically one to three years) for an Exchange Visitor is determined by the Service, in accordance with a certificate of eligibility issued by the individual program sponsor. Exchange Visitors are employed or trained by private companies as well as by universities, research centers and other institutions. Some of them may be described as senior staff.

The number of Exchange Visitors, from all countries, increased from 110,942 in FY 1985 to 177,186 in FY 1990. The largest number came from the United Kingdom and Japan. The number from the United Kingdom increased from 12,675 in FY 1985

to 23,023 in FY 1990 and the number from Japan increased from 6,363 to 10,473 during the same period.

The Temporary Worker category includes a number of distinct groups, three of which relate to the subject of this hearing: 1) aliens employed in specialty occupations (prior to October 1, 1991, this class, H-1B, refers to aliens of distinguished merit and ability); 2) aliens coming to perform temporary service or labor for which capable unemployed persons can not be found in the U.S. (class H-2B); and 3) aliens coming as trainees in programs not designed primarily to provide productive employment (class H-3). The term "specialty occupation" as used here means an occupation that requires the application of a highly specialized body of theoretical and practical knowledge and for which a minimum of a bachelor's degree is required for an entry level position. The effect of this IMMACT change is to remove prominent aliens not employed in specialty occupations from the Temporary Worker category. Under IMMACT, many prominent aliens will fall under the new nonimmigrant categories of O and P. A company may choose to bring senior staff to the U.S. as Temporary Workers rather than as Intracompany Transferees or Treaty Traders because of the difference in eligibility requirements.

Eligibility for H-1B status requires approval of a petition by the Service and, effective October 1, approval of a labor condition application regarding wage and working conditions, by

the Department of Labor. Approved petitions are forwarded to the Department of State, which has jurisdiction over visa issuance. Temporary Workers in the H-1B class are currently allowed maximum stays of five (5) or, in extraordinary circumstances, six (6) years in the U.S. This maximum period of stay was changed to six (6) years under IMMACT. The total number of visas issued was limited by IMMACT and may not exceed 65,000 per fiscal year, beginning October 1, 1991.

Petitions for workers in the H-2B class must be accompanied by certifications from the Department of Labor regarding the unavailability of capable unemployed workers in the U.S. Those workers in classes H-2B and H-3 are limited to maximum stays of three (3) and two (2) years, respectively; except for those engaged in seasonal or intermittent employment or who commute to part-time employment. From FY 1985 to FY 1990, the number of aliens, from all countries, that was admitted in the Temporary Worker category rose from 74,869 to 146,761. The number from the United Kingdom rose from 10,270 to 17,175 and the number from Japan rose from 2,824 to 10,917 during this period.

Visitors for Business seek to enter the United States to engage in a variety of business related activities. They are generally admitted and remain in the U.S. for less than one year, though there is no limit on the number of extensions of stay which may be granted. Visas, where required, are issued by the

Department of State. From FY 1985 to FY 1990, the number of aliens, from all countries, admitted in this category increased from 1,796,819 to 2,642,061. The largest numbers came from the United Kingdom and Japan. The number from the United Kingdom increased from 272,690 to 377,282 and the number from Japan increased from 204,521 to 301,621 during this period.

The new Extraordinary Ability category (O-1) will be available to aliens who can demonstrate by sustained national or international acclaim that they have extraordinary ability in business, the sciences, the arts, education, or athletics. Extraordinary Ability is similar to the Temporary Worker (H-1B) but only the most highly qualified temporary workers will meet the eligibility requirements. Written consultation with the peer groups, management organizations or labor organizations is required. An alien's entry must substantially benefit the United States, prospectively. Approved petitions will be forwarded to the Department of State, which has jurisdiction over the issuance of visas. An Extraordinary Ability alien may be admitted for a specific event, not to exceed three years. An extension of stay of one year may be granted to complete the event. Implementation of this new statutory provision is scheduled for October 1, 1991.

The Service's efforts to deter and detect fraud have been enhanced through centralized processing of employment related petitions and applications at the four regional Service Centers

and by the IMMACT provisions for imposition of civil penalties and sanctions on fraud perpetrators. We are continuing our efforts to facilitate the entry of nonimmigrant workers while increasing our commitment to the deterrence and detection of fraud.

The Service does not have jurisdiction over income and social security taxes. The Subcommittee may wish to make inquiry on taxation issues with the Internal Revenue Service and the Social Security Administration.

This concludes my prepared statement. I will be pleased to answer any questions you may have.

Mr. LANTOS. Thank you very much, Mr. Puleo.

Would you identify the gentleman with you?

Mr. PULEO. Yes. This is a senior immigration examiner, Mr. Edward Skerrett.

Mr. LANTOS. We're pleased to have you, sir.

Mr. SKERRETT. Thank you.

Mr. LANTOS. Well, let me tell you several things that puzzle me about the procedure, and straighten me out where I'm wrong.

I am a company in Japan and I take it I, as a company, may submit a petition for an L visa; is that correct?

Mr. SKERRETT. That is true, Mr. Chairman. The petition can be filed by the Japanese company. But if it's the first time a petition has been filed for that particular company, then the initial admission is limited to 1 year for the individual who would be coming to the United States.

Mr. LANTOS. OK. But let's assume I've been in business for many years, so I can file a petition for an L visa?

Mr. SKERRETT. In that case, the petition would be filed by the United States subsidiary or branch of the Japanese company. They would file the petition in the United States and we would, in turn, notify the Department of State that the petition has been approved and they would——

Mr. LANTOS. I am now a Japanese-owned company in the United States and I file a petition for 10 L visas, OK?

Mr. SKERRETT. Yes, sir.

Mr. LANTOS. And you grant this. Then I fill in the names basically?

Mr. SKERRETT. No. The names have to be——

Mr. LANTOS. Well, the names are on it. But that's all you need, completed applications filed by Sumitomo?

Mr. SKERRETT. No, there has to be an establishment that people are coming in in one of three categories, which are very specific. They have to be coming to the United States as either executives, managers, or individuals with specialized knowledge.

Mr. LANTOS. All right. I designate all 10 as executives and managers.

Mr. SKERRETT. OK.

Mr. LANTOS. Do you have any control over this? Do you have any evaluation of this?

Mr. SKERRETT. We evaluate that they are coming in to do duties which are executive. These are currently outlined in our regulations and now they are in statute—or as of October 1 they will be in statute as defined by Congress.

Mr. LANTOS. But it's really the company that determines what constitutes an executive level of employment, isn't that true?

Mr. SKERRETT. That's correct.

Mr. LANTOS. So we really have, speaking practically, very little analytical evaluation of who these people are who are sent here for 4 years?

Mr. SKERRETT. Well, we examine the duties as outlined and——

Mr. LANTOS. Well, you examine the piece of paper as submitted, not really the duties.

Do these people have to take a language test?

Mr. SKERRETT. No, but they are subject to consular interview before the visa is issued. If the U.S. Consul overseas has any reason to feel they are not qualified, then the petition will be returned to us for consideration of revocation.

Mr. LANTOS. With respect to the special professional talent, what mechanism does your agency have for determining the availability of U.S. citizens to perform these same services?

Mr. PULEO. Where the statute requires a labor certification requirement, the Department of Labor would make that determination. Where there is not, where no requirement is required, we would base it on our statutes and regulations.

Mr. LANTOS. You see, studying this issue, what I find is that there is very little correlation between the value of a foreign country's investment in the United States and the number of L visas issued. For instance, take a recent year, 1987. The Netherlands had a direct investment in the United States of $40 billion, and 2,900 L visas were issued to Dutch citizens that year. That same year, the Japanese had less than $30 billion in direct investment, but 13,200 L visas were issued to them, more than four times the number that the Dutch citizens got.

Now, this makes a lot of sense because the Dutch use American citizens in executive and managerial positions much more than the Japanese do. That's what this hearing is all about. I'm not saying that you have any obligation at the moment—at least I don't know of any obligation that any of you gentlemen have—to sort of make some analytical judgments. But theoretically, the Japanese companies could have submitted twice that many L visa requests and you probably would have granted those, wouldn't you?

Mr. PULEO. In a majority of the cases, yes.

Mr. LANTOS. So what we really have is an open-ended policy here, which is determined by the Japanese company and not by United States policy; is that accurate to say?

Mr. PULEO. Yes, that would be accurate.

Mr. LANTOS. Am I fair in saying that, for all practical purposes, the L visa approval is a pro forma procedure?

Mr. PULEO. Not necessarily pro forma. We do do some analysis, and as Mr. Skerrett stated, the State Department does conduct an interview in the home country. However, it's fair to say that for the two nationalities that I mentioned in my statement, the United Kingdom and Japan, in the majority of cases they are approved. We find very little violation of our statutes by either nationality.

Mr. LANTOS. Yes. I don't think we're dealing with fraud in large numbers here. That is not my point. My point really is the relationship between the Immigration Service approving any bona fide request which then results in United States citizens hitting a glass ceiling, because such a very large number of Japanese nationals are admitted in executive and managerial positions that clearly the number of employment opportunities for United States citizens is drastically diminished. Is that a reasonable conclusion?

Mr. PULEO. I would say yes.

Mr. LANTOS. Do you find anything disturbing about that?

Mr. PULEO. Personally, or as an executive of the Immigration Service?

Mr. LANTOS. Both ways. Take whichever you want to take first.

Mr. PULEO. I opened myself up, didn't I?

Mr. LANTOS. All right. Why don't you answer first as in your official capacity.

Mr. PULEO. No. It may be that these nationalities do use our immigration laws to the *n*th degree, and I think the numbers verify that. Personally, I do see a difficulty where Americans have the inability to rise to the top of whatever firm, regardless of race, color, sex, or creed.

Mr. LANTOS. Do you have any comment on this?

Mr. SKERRETT. I would second that.

Mr. LANTOS. You would second that. I would second it, also. What disturbs me about this is not your performance, because you're complying with the law and you're executing it, I'm quite sure, efficiently and intelligently and all that. But the law really, while it tries to be very open and free with respect to these visas, which I think is basically not a bad policy, it has no awareness or no consideration of the very negative impact this policy has with respect to American employees working for Japanese-owned companies who aspire to executive and managerial positions.

The final question I suppose I have is, do you think there is any legislative remedy that we could propose that might deal with this issue, either or both of you gentlemen?

Mr. PULEO. Well, I suppose there is. However, Congress, as late as last year, looked at the nonimmigrant categories and, in fact, did not tighten them but loosened them.

The one requirement that I mentioned in my opening statement, that an L applicant would have to have acquired 1 year of continuous service in the preceding year, has been loosened to 1 year in the past 3 years. So I'm sure that if Congress had the inclination, it could, in fact, have made the rules a little tighter.

Mr. LANTOS. Do you have a comment on this, or do you concur?

Mr. SKERRETT. I don't think there's anything I could add to that, Mr. Chairman.

Mr. LANTOS. So if, in fact, we want to deal with this very serious problem that our investigation has unearthed, we will have to go at it in terms of equal employment opportunities and not via the immigration route; basically, that's your conclusion?

Mr. PULEO. It may be, yes.

Mr. LANTOS. Congresswoman Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Following up on that, could you explain that a little bit better, about the recommendation that could be made legislatively to improve the situation, but you don't think it would be feasible or that Congress would approve it? Could you say that again because I didn't quite catch it.

Mr. PULEO. Certainly. There currently is a requirement—and it will be changed as of October of this year—on the L visa, that the individual who is applying for an L status in the United States has to work currently continuously for 1 year in the succeeding year. That is being loosened to 1 year in the past 3 years.

Ms. ROS-LEHTINEN. And has that been a change that any particular group wanted to bring about? Who was lobbying for that change?

Mr. PULEO. I'm not aware of the lobbies. I'm just the recipient of the acts that are passed by Congress.

Ms. ROS-LEHTINEN. The blanket petition system, what recommendations do you think could be put into place to make sure that that system is not abused?

Mr. SKERRETT. We've worked with the blanket petition system now for, I believe, 5 or 6 years. Now there is specific language in the Immigration Act of 1990 regarding the blanket system.

I think in our current regulations, the specialized knowledge individuals who can come into the United States are limited to specialized knowledge professionals. In the language of the Immigration Act of 1990, I don't believe that language is there. So it would open the blanket petition process to not only executive and managers but all specialized knowledge personnel.

There are certain conditions under which the blanket petition can be approved. In other words, the company has to have a track record of a certain amount of petitions that have been filed over a period of time. I think that is one way that there are certain checks and balances within the system itself.

Ms. ROS-LEHTINEN. So they would have to have been operating for a certain amount of time and be actively seeking these petitions?

Mr. SKERRETT. That's correct.

Ms. ROS-LEHTINEN. Thank you.

Thank you, Mr. Chairman. I want to thank you again, Mr. Chairman, and to your staff and everyone who was present here today, for an excellent committee hearing that I think will serve its purpose. I think that if there needs to be legislation that we will do it, not in immigration as much as in patterns of discrimination. But I think calling attention to this problem by the very fact of holding the hearing should go a long way to ending the patterns of discrimination that we have seen present in Japanese-owned companies. Let's hope that other companies follow suit.

Mr. LANTOS. That certainly is our hope. I want to thank my colleague for her very valuable and important contributions, and I want to thank both of you.

This hearing is adjourned.

Mr. PULEO. Thank you, Mr. Chairman.

[Whereupon, at 3 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Economic Affairs
Economics and Statistics Administration
Washington, D.C. 20230

July 22, 1991

JUL 24 1991

Honorable Tom Lantos, Chairman
Employment and Housing Subcommittee
Committee on Government Operations
Room B-349-A Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are the responses prepared by the Bureau of Economic Analysis in response to your July 10 letter to Secretary Mosbacher. I hope they will prove useful to your Subcommittee. If we can provide further data on foreign direct investment, please feel free to call on us.

Sincerely,

Michael R. Darby
Under Secretary and Administrator

Enclosure

The Administrator

Q.--What is the number of Japanese owned, U.S. based firms in the United States and the number of employees of these companies?

A.--In 1988, the most recent year for which data are available, Japanese investors owned 3,138 nonbank U.S. companies, which employed 401,000 workers. Data for 1989 from BEA's annual survey of foreign direct investment in the United States are scheduled to be released in August.

Q.--What are the patterns of growth over the last decade in the number of firms and the number of employees?

A.--Since the beginning of the decade, the number of companies owned has grown 8 percent per year (from 1,161 in 1980) and employment has grown 17 percent per year (from 115,000). Growth has been particularly strong in the last two years. For example, employment increased 37 percent in 1987 and 32 percent in 1988. (Prior to 1987, the largest percent increase in any one year was 20 percent in 1981.)

Q. How and with whom do you share your data on foreign owned subsidiaries?

A. Under the International Investment and Trade in Services Survey Act (IITSSA), as amended by the Foreign Direct Investment and International Financial Data Improvements Act of 1990, BEA is specifically authorized to share its data on foreign direct investment in the United States (FDIUS) with the Bureau of the Census (Census) and the Bureau of Labor Statistics (BLS).

BEA and Census are now working together on a major project to link BEA's enterprise-level (i.e., company) data on FDIUS with Census' establishment-level (i.e., plant) data on U.S. businesses. The initial link is for 1987, the year for which each agency has the most comprehensive data. The link project had been under consideration by the two agencies for some time; it got underway after legislation allowing joint sharing of data was passed last fall and funding was provided in BEA's FY 1991 budget. Results of a mechanical computer link of BEA and Census files, using Employer Identification Numbers (EIN's), have been very encouraging. Work is now underway to improve the mechanical link by comparing the levels and state-by-state distributions of employment of the linked entities and reconciling differences. Results of the initial link will be published in June 1992; they will provide much more detail, by industry and State, on FDIUS than is now available. Detailed data will be published for employment, employee compensation, shipments or sales, and the number of establishments. As soon as the 1987 link is complete, BEA and Census will work to link data for later years and will assess the feasibility of providing additional data items for the linked entities.

In a separate project, BEA is sharing enterprise-level data on FDIUS with BLS so that BEA's data can be linked, through EIN's, to BLS' establishment-level unemployment insurance records and, subsequently, to its occupational employment survey data. BEA delivered an initial computer tape of 1987 data to BLS in mid-May; a second tape, with additional data, was delivered at the end of June. A preliminary draft of a memorandum of understanding between the two agencies has been prepared, but many of the details of the project, including a schedule and the need for any further input from BEA, have yet to be determined.

BEA may share its data on FDIUS with other agencies that are designated by the President to perform functions under the IITSSA. The functions to be performed must relate to the collection, analysis, or improvement of the data on FDIUS. As with the Census and BLS projects, the data must be used only for analytical and statistical purposes and cannot be used for purposes of taxation, investigation, or regulation. The data cannot be published in such a manner that the person to whom the information relates can be specifically identified.

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